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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.7

No. [redacted]218.

THE MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY AND THE GULF AND CHICAGO RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSISSIPPI, THE MISSISSIPPI RAILROAD COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED JANUARY 31, 1907.

(20,555.)

(20,555.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 590.

THE MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY AND THE GULF AND CHICAGO RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSISSIPPI, THE MISSISSIPPI RAILROAD COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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Pleas and Proceedings had and done at the regular term of the Supreme Court of Mississippi begun and held in the Court room in the Capitol in the City of Jackson, on the First Monday and the first day of April, in the year of our Lord, Nineteen Hundred and Five.

Present: The Honorable Albert H. Whitfield, Chief Justice, and the Honorable Jeff Truly and the Honorable W. M. Cox, Associate Justices; George C. Myers, Clerk of said Court in person; and Charles Johnson, Marshal.

Proclamation having been duly made, the Court proceeded to the despatch of business.

Afterwards, on the 20th day of May, Nineteen Hundred and Five, the following record was filed in said Court, in words and figures as follows, to-wit:

ORIGINAL BILL.

State of Mississippi, Pontotoc County.

In the Chancery Court, September Term, 1904.

State of Mississippi, et al.,
vs.
Mobile, Jackson & Kansas City Railroad Co., et al.

The State of Mississippi by William Williams, Attorney General, the Mississippi Railroad Commission, and S. D. McNair, President of said Commission, J. C. Kincannon and R. L. Bradley, members, Complainants,exhibit this their bill of complaint against the Mobile, Jackson and Kansas City Railroad Company, a corporation organized under the laws of the states of Alabama and Mississippi, and the Gulf & Chicago Railway Company, a corporation organized under the general laws of the State of Mississippi, defendants, and respectfully show as follows:

1. That Complainant, the Mississippi Railroad Commission, constituted as aforesaid, exists under the laws of the State of Mississippi and under the said laws is charged with the duty of supervising railroads and other common carriers in said state, and also with the duty of enforcing the observance of the laws

of this state by railroad companies and other carriers.

2. That defendants, the Gulf & Chicago Railway Company, was organized under the general laws of the State of Mississippi in the early part of the year 1903 with authority to construct and operate a railroad from a point at or near the town of Decatur in Newton County, Mississippi, in a general northerly direction through the county of Pontotoc and through the State of Mississippi to the Tennessee line. A copy of the said charter is filed herewith as exhibit "A" to this Bill and prayed to be taken as a part hereof.

3. That at the time of the organization of the said Gulf & Chicago Railway Company as aforesaid there was in existence and then being operated from the town of Pontotoc in the State and then being operated from the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee, a narrow gauge road by a railroad corporation existing under the laws of the State of Mississippi and Tennessee, known as the Gulf & Chicago Railroad Company; that said narrow gauge road as then existing and being operated was built about the year 1887, since which date it has been in existence and operated as aforesaid by the said Gulf & Chicago Railroad Company and other corporations as hereinafter shown.

4. That the said Gulf & Chicago Railroad Company was bound by its acquisition of the said narrow gauge line from Pontotoc, Mississippi, to Middleton, Tennessee, to continue and preserve intact throughout its entire length the said line of railroad from the town of Pontotoc north, and the consolidated corporation, the Gulf & Chicago Railway Company and its lessee, the Mobile, Jackson & Kansas City Railroad Company, were in turn bound to so continue and preserve intact the said line broadened and standardized as was stipulated in the articles of consolidation hereinafter set forth.

5. That prior to the 6th day of July, 1903, the said Gulf & Chicago Railway Company and the said Gulf & Chicago Railroad Company, with other railroad corporations were consolidated under the name of the Gulf & Chicago Railway Company, and on the said 6th day of July, 1903, a petition was presented to complainant, the Mississippi Railroad Commission, by the attorneys for the consolidated corporation, praying the approval

of the said Railroad Commission of the said consolidation; that in the said petition it was stipulated and by the granting of the petition by the sail Railroad Commission it was agreed that the said consolidated corporation should broaden and standardize the said narrow gauge line running north from the town of Pontotoc, as it then existed and was being operated, and that said existing line when broadened and standardized as agreed, should be part of the main line of said Gulf & Chicago Railway Company extending from Decatur, Mississippi, to Jackson, Tennessee. A copy of said petition and the order thereon is filed herewith, marked Exhibit "B" and prayed to be taken as a part thereof.

6. That on or about the date of the consolidation approved as aforesaid, the said Gulf & Chicago Railway Company executed and delivered to defendant, the Mobile, Jackson & Kansas City Railroad Company a lease of all its railroad property then constructed and being operated and that to be thereafter constructed including the narrow-gauge railroad hereinafter mentioned and operated as aforesaid from the town of Pontotoc, in the State of Mississippi, to the town of Middleton, in the State of Tennessee, and agreed by said petition presented to the said Railrod Commission by the said consolidated corporation and the order thereon to be made a part of the line extending from Decatur, Mississippi, to Jackson, Tennessee, as aforesaid, and all extensions and branches thereof which said Gulf & Chicago Railway Company, might after that date construct, including its entire proposed line from the town of Decatur in the State of Mississippi, to the city of Jackson in the state of Tennessee, for the period of 99 years; that since the execution of the said lease, said defendant, the Mobile, Jackson & Kansas City Railroad Company, has been in control and operation of said line of narrow gauge railroad between the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee.

7. Complainants further show that the said Gulf & Chicago Railway Company in violation of the terms and in disregard of the representations contained in its petition for approval of the said consolidation by this Commission to the effect that the said narrow gauge line of railroad extending from Pontotoc, Mississippi, to Middleton, Tennessee, should be broadened and standardized throughout its entire length and made a part of

the line of said consolidated corporation authorized to be constructed by its charter, has as complainants are informed and believe and charge, broadened and standardized the said narrow guage line from Middleton, Tennessee, southward to a point one mile and a half from the end of said line within the said town of Pontotoc, and the said defendant lessee, the said Mobile, Jackson & Kansas City Railroad Company is now operating said line so changed to the said point to which it has been broadened and standardized and the remaining part of said line has been abandoned; and complainants show that that part so abandoned is the most valuable and the most important part of the said road, extending through a thickly populated district in the principal business portion of the said town of Pontotoc. Complainants further show that the representation by the said consolidated corporation that it would broaden and standardize the said line of railroad extending into the town of Pontotoc as the said line was on the date of said consolidation being operated was a material consideration in passing upon the said petition and the said consolidation would not have been approved but for the said representation.

8. Complainants further show that said line has been abandoned and its operation discontinued and the defendant has refused to broaden and standardize it without any authority from complainant the Mississippi Railroad Commission, and that its consent as never been asked nor given thereto, and the said act of abandonment was wholly unauthorized, in violation of law, in utter disregard of the rights of the community intended by the said Commission to be protected by the said order approving the consolidation aforesaid.

9. Complainants further show that the said narrow gauge line of railway was constructed by the Gulf & Ship Island Railroad Company about the year 1887; that when the said line was extended into the said town of Pontotoc a right of way was obtained for the location of said line by purchases, by the exercise of the right of eminent domain as complainants are informed and believe, and by the donations from the people of that community; that said right of way for said line in the said town of Pontotoc was selected and determined upon with a view to extending the railroad on south through the said town of Pontotoc and the said

road was built and established and the town has been building for the last twenty years with reference to the line of railroad then so located.

Complainants show that the interests of the public are involved in the said change of route through the community of the town of Pontotoc; that the convenience and comfort and property of more than one thousand people are involved; that a change of said route would disturb established conditions and practically effect the breaking up of a prosperious community for the benefit of the said defendants and of a few property owners in another part of the town of Pontotoc recently added thereto through which it is proposed to run the new line of railroad as hereinafter shown.

10. Conplainants further show that the said original town of Pontotoc is the county-seat of Pontotoc county, as fixed by an act of the Legislature of the State of Mississippi, of the—— day of————————, 18—; that Section 187 of the Constitution of the State of Mississippi provides that no railroad thereafter constructed in this state shall pass within three miles of any county seat without passing through same and establishing and maintaining a depot therein unless prevented by natural obstacles, provided such town or its citizens shall grant the right of way through its limits and sufficient grounds for ordinary depot purposes. And complainants further show that the said defendant, the Gulf & Chicago Railway Company, through a recent addition to the town of Pontotoc but not through that part of said town which is the county seat is building its line within less than three miles of the county seat of the said county of Pontotoc without passing through the same; and complainants show that there are no natural obstacles to prevent the said railroad company from building its line through the said county seat, and that the people of the said town of Pontotoc, as complainants, are informed, stand ready to greant the right of way through the limits of the said county seat and sufficient grounds for ordinary depot purposes. In fact, complainants show that the railroad company, the Gulf & Chicago Railway Company now owns a right of way through a large part of said county seat, and sufficient grounds for ordinary depot purposes.

11. Complainants show that the conduct of the said de-

fendants in undertaking to build their said line just outside the limits of the county seat is in violation of said section 187 of the Constitution, in wilful disregard of the law and of the order of the complainant, the Mississippi Railroad Commission and, shows a reckless indifference to the rights of the people long established.

12. Complainants now show that the said defendants are actually engaged in the said violations of the laws of the State of Mississippi and of the order of the Commission approving the consolidation aforesaid, and of the rights of the public. That the damage done and about to be done will be irreparable if not prevented; that they have no adequate remedy at law; that the rights of the public and of the several parties hereto can be fully, adequately, promptly and finally adjudicated only by a court of equity.

Wherefore, complainants pray that an injnction issue at once against the said defendants temporarily restraining them and each of them from constructing and operating the said proposed line of railroad passing within three miles of the said county seat without passing through same, and upon final hearing that they be perpetually enjoined from building and operating a road along said route and commanding them to broaden and standardize the said line of railroad extending into the said county seat of Pontotoc county, as it has been established for years, and as the said consolidated corporation agreed to do from the point north of the said county seat from which said narrow guage line has been abandoned and that the said defendants be required to operate the said line into the said county seat as a part of the line built and to be built from Decatur, Mississippi, to Jackson, Tennessee, and that they be commanded to extend the said line on through the said county seat as required by said section 187 of the Constitution of the State of Mississippi and as required by law and by the order of the complainant, the Mississippi Railroad Commission;

And complainants pray that if they are mistaken in the relief prayed they be granted such other further or general relief as the nature of their case requires and as in equity they are entitled to.

As in duty bound they will ever pray. An answer under oath is expressly waived.

WILLIAM WILLIAMS,
Attorney General.
J. N. FLOWERS,
Ass't. Attorney General.

MITCHELL & FLETCHER,
Of Counsel.

STATE OF MISSISSIPPI,
Hinds County.

This day personally appeared before me, the undersigned, Supreme Court Clerk for the State of Mississippi, S. D. McNair, President of the Mississippi Railroad Commission, and one of the complainants in the bill for an injunction prepared to be filed in the chancery court of Pontotoc county against the Mobile, Jackson & Kansas City Railroad Company, et al., this affidavit being attached to said bill, who makes oath that the matters and things stated and set out in said bill of his own knowledge are true as stated, and those stated upon information and belief he believes to be true.

S. D. MCNAIR.

Sworn to and subscribed before me this the 23rd day of July, 1904.

GEO. C. MYERS,
Clerk of Supreme Court.
By Jas. R. McDowell, D. C.

THE STATE OF MISSISSIPPI,
To the Chancery Clerk of Pontotoc County:

Issue the writ of injunction as prayed for in the foregoing bill on its being filed in your office.

Done in vacation at Jackson, Miss., this 2nd day of August, A. D., 1904.

S. S. CALHOON,
Judge of the Supreme Court of said State.

Filed August 3rd, 1904.

W. T. FURR, Clerk.

By W. J. LYON D. C.

EXHIBIT "A".

Gulf & Chicago Railroad Company.

TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

Sir—In compliance with the requirements of section 3572 of the annotated code of the general laws of the State of Mississippi, the undersigned having accociated themselves together for the purpose hereinafter mentioned and desiring that they may be authorized to organize a railroad corporation according to law do hereby certify:

1st. The name, residence, postoffice address, of each of the undersigned are as follows: W. A. Liddell, New Albany, Mississippi, C. F. Morgan; Ripley, Mississippi; R. T. Gooddell, New York City, New York; C. F. Cullens, New Albany, Mississippi; John Y. Murray, Jr., Ripley, Mississippi.

2nd. The southern terminus of the proposed railroad will be at a point at or near the town of Decatur, Mississippi, and the northern terminus will be at or near the city of Jackson, Tenn. The point at which it is proposed said railroad shall cross the state line of the State of Mississippi, will be at or near the town of Broomsfield, in the county of Tippah.

3rd. The line of the proposed railroad in the State of Mississippi will extend in a general northerly direction from a point at or near the town of Decatur, in the county of Newton, through the counties of Neshoba, Winston, Choctaw, Webster, Chickasaw, Pontotoc, Union and Tippah, crossing the said line of the State of Mississippi, at or near the town of Broomsfield, in the county of Tippah, to a point at or near the city of Jackson, in the county of Madison, in the State of Tennessee, the estimated length of said line of railroad within the State of Mississippi being one hundred, ninety-two (192) miles.

4th. The name of the said railroad shall be the Gulf & Chicago Railway Company.

5th. It is hoped that the work of building and constructing the said line of railroad will be completed within a period of two years from the date of this application.

In witness whereof we have hereunto set our hands and seals the 16th day of April, A. D., 1903.

W. A. LIDDELL,
C. F. MORGAN,
R. T. GOODDELL,
C. S. CULLENS,
JNO. Y. MURRAY, JR.
C. S. CULLENS,
JNO. Y. MURRAY, JR.

THE STATE OF MISSISSIPPI, County of Union.

Personally appeared before me a notary public in and for New Albany, in the said county of Union, the above named W. A. Liddell, C. F. Morgan, R. T. Goddell, C. S. Cullens, Jno. Y. Murray, Jr., who acknowledged that they signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand this the 16th day of April, A. D., 1904.

SAM D. OWEN, Notary Public.

The foregoing application to organize a railroad corporation in the state of Mississippi is respectfully referred to the Honorable Attorney General for his advice as to whether the same conforms to law. April 17th, 1903.

A. H. LONGINO, Governor.

The provisions of the foregoing proposed application to organize a railroad corporation in this state conforms to law.

WILLIAM WILLIAMS, Att'y. Gen'l.
By J. N. FLOWERS, Ass't. Att'y. Gen'l.

STATE OF MISSISSIPPI,
Executive Department, Jackson.

To all to Whom These Presents shall come—GREETING:

Whereas, W. A. Liddell and C. S. Cullens whose postoffice address is at New Albany, Mississippi, C. F. Morgan and Jno. Y. Murray, Jr., whose postoffice address is at Ripley, Mississippi,

and R. T. Gooddell, whose postoffice address is New York, N. Y., have made application to me declaring their desire to organize a railroad corporation under the laws of this state;

Now, therefore, I, A. H. Longino, Governor of the State of Mississippi, by virtue of authority vested in me by the constitution and laws of the state do issue this my proclamation, authorizing the said W. A. Liddell, C. F. Morgan, R. F. Gooddell, C. S. Cullens, and Jno. Y. Murray, Jr., to organize a railroad company with the terminal points of said railroad and Decatur in the State of Mississippi, and Jackson, in the State of Tennessee, the said line of railroad to extend in a northerly direction from the town of Decatur, in the county of Newton, passing through the counties of Neshoba, Winston, Choctaw, Webster, Chickasaw, Pontotoc, Union and Tippah, into the State of Tennessee, crossing the state line at or near the town of Broomsfield in the county of Tippah. The name of said railroad corporation shall be the Gulf & Chicago Railway Company.

In Testimony whereof I have hereunto set my hand and caused the great seal of the State of Mississippi to be affixed.

Done at the Capitol in the city of Jackson, this 17th day of April, 1903.

[SEAL]

A. H. LONGINO.

By the Governor: JOSEPH W. POWER,
Secretary of State.

Recorded 17th day of April, 1903.

Organization of the Gulf & Chicago Railway Company.

We the undersigned being all of the Directors of the Gulf & Chicago Railway Company hereby certify that the said corporation was organized on the 21st day of April, 1903, and that the amount of the entire capital stock of said company is Five Million Dollars, divided into fifty thousand shares of the par value of One Hundred Dollars each, dated April 21st, 1903.

W. H. Phyfer, J. T. Baker, R. H. Patterson, J. W. Sloan, S. D. Cowan, Jno. Y. Murray, Jr., Jno. B. Wiseman, C. S. Cullens, C. F. Morgan, W. A. Liddell, R. T. Gooddell.

STATE OF MISSISSIPPI, Union County.

John Y. Murray, Jr., being first duly sworn upon oath deposes and says that he has read the foregoing statement subscribed by the directors of the Gulf & Chicago Railroad Company, and that the matters and things therein contained are true of his own knowledge.

JOHN Y. MURRAY, JR.

Subscribed and sworn to this the 21st day of April, 1903.

H. MARSHALL,
Circuit Clerk and ex-officio Notary Public,
Union County, State of Mississippi.

Recorded April 23, 1903.

STATE OF MISSISSIPPI,
Office Secretary of State, City of Jackson.

I, Joseph W. Powers, Secretary of State, do hereby certify that the foregoing pages to which this certificate is attached contains a true and correct copy of the application for a charter made by the incorporators of the Gulf & Chicago Railway Company and the statement of their organization filed in my office in pursuance of the provisions of chapter 112 of the Code of 1892 as the same appears of record in the Record of Incorporations, Book No. 11, on pages 243 and 251.

Given under my hand and great seal of the State of Mississippi, this the 23rd day of July, 1902.

[SEAL] JOSEPH W. POWERS,
Secretary of State.

Filed August 3rd, 1904.

W. T. FURR, Clerk.

EXHIBIT "B".

Consolidation of the Gulf & Chicago Railway Company, of Mississippi and Tennessee.

Messrs. McIntosh and Rich, General Attorneys for the Gulf & Chicago Railroad Company, presented the following application of said railroad company, to-wit:

Application is hereby made for the consent and approval of your honorable body to the consolidation of the Gulf & Chicago Railway Company, a corporation under the laws of Mississippi;

the Gulf & Chicago Railway Company, a corporation under the laws of the State of Tennessee, and the Gulf & Chicago Railway Company, a corporation under the laws of Mississippi and Tennessee, pursuant to the articles of consolidation executed by the said corporation and on file in the office of the secretary of state of Mississippi, on the 27th day of January, 1903.

We respectfully submit that the consolidation should be validated and perfected for the following reasons, to-wit:

1. The consolidation of said corporation is fully authorized and permitted under the laws of the State of Mississippi and Tennessee.

2. Resolutions to enter into said consolidation were unanimously adopted by the respective board of directors and by all the stock holders of said corporations.

3. The lines of railroad owned and operated and controlled and projected by the constituted companies composing said consolidation, were and in no ways parallel to competing lines. On the contrary, the consolidation was effected for the single purpose of furthering the general plan of building and equipping and thereafter operating a single track, standard gauge line of railroad extending in a general northerly direction from the town of Decatur, Mississippi, to the city of Jackson, Tennessee. The present constructed narrow gauge railroad acquired from the Gulf & Chicago Railroad Company and running between the town of Pontotoc, Mississippi, and Middleton, Tennessee, will be broadened and standardized and will thereupon become a part of the line of railroad, operated by the consolidated corporation.

4. The construction and operation of this line of railroad will be of inestimable value to the rebuilding and development of that portion of the state which it will traverse and will result in permanent and lasting benefit to the entire state of Mississippi.

We apprehend no serious objection will be interposed to the consummation of the consolidation, and we respectfully pray that an order be entered by this honorable body, fully ratifying, approving, confirming and perfecting the consolidation of said corporation in the manner set forth in said articles of consolidation as and of the 27th day of June.

Signed by McIntosh & Rich and John W. T. Faulkner.

ORDER.

The application of the Gulf & Chicago Railroad companies, organized under the laws of the State of Mississippi and Tennessee, for the permission to consolidate said corporations, coming on to be heard and it appearing to the satisfaction of the Commission that said corporations do not own or operate parallel or competing lines of railroad:

It is ordered by the Commission that permission to consolidate said corporation as prayed for in said application be and the same is hereby granted by the Commission, this 6th day of July, 1903.

I hereby certify that the above and foregoing is a true and correct copy of the petition presented by the attorneys for the Gulf & Chicago Railway Company, presented to the Mississippi Railroad Commission, on the 6th day of July, 1903, and the order thereon as the same appears on the page of Minute Book No.— in my office. This July 23, 1903.

.....

Sec'y. Mississippi Railroad Commission.

Filed August 3rd, 1904.

W. T. FURR, Clerk.
By W. J. LYON, D. C.

INJUNCTION WRIT—CHANCERY COURT.

THE STATE OF MISSISSIPPI,

Pontotoc County. Chancery Court.

The State of Mississippi to The Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railway Company—GREETING:

Whereas, It has been represented to us, in our said Chancery Court, on the part of The State of Mississippi, by Wm. Williams, Attorney-General, and the Mississippi Railroad Commission, and S. D. McNair, President, and J. C. Kincannon and R. L. Bradley, members, thereof, Complainants, that they have lately exhibited their bill against you, The Mobile, Jackson & Kansas City Railroad Company, and The Gulf & Chicago Railway Company., Defendants, to be relieved, touching the matters in said bill contained. We therefore, in consideration of the premises,

and of the allegations to said bill contained, strictly enjoin and command you, the said Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railway Company, under penalty prescribed by law to be levied on your goods and chattels, lands and tenements to our use, that you absolutely refrain from constructing and operating a certain line of railroad from Decatur, Miss., to Middleton, Tenn., or any other line of railroad from any point whatsoever to any other point passing within three miles of the county seat of Pontotoc County, Mississippi, as the said county seat was originally laid out, marked and established, without passing through the said county seat, and from any further proceedings against the said complainants, touching any of the matters in said bill contained, until our said Court shall make another order to the contrary.

In testimony whereof, I. W. T. Furr, Clerk of said Court, have hereunto set my hand and affixed the seal of said Court, at office, in Pontotoc, Miss., this 3rd day of August, A. D., 1904.

Issued the 3rd day of August, A. D., 1904.

W. . T. Furr, Clerk.
By W. J. Lyon, D. C.

To the Sheriff of Tippah County, to execute and return.

[Endorsed on back:]

No. 1581.
Chancery Court.
The State of Mississippi, et al.
vs. Injunction Writ.
M. J. & K. C. Railroad Co., et al.
Returned and filed August 13, 1904.
W. T. Furr, Clerk.

Pontotoc County.

Fees of J. C. Wallace, Sheriff, serving summons, 1 dft. $1.50
E. & R. Writ ..... .50

$2.00

J. C. Wallace, Sheriff Tippah Co.

I have this day executed the within writ personally by delivering a true copy thereof to C. F. Morgan, one of the incorporators and directors of the within named defendant, Gulf & Chicago Railway Company, and also acting as Superintendent of the Gulf & Chicago Division of the within named defendant, The

Mobile, Jackson & Kansas City Railroad Company.

Witness my hand the 11th day of August, 1904.

J. C. WALLACE,
Sheriff Tippah County.

THE STATE OF MISSISSIPPI,

To the Sheriff of Tippah County in said State:

You are hereby commanded to summon The Mobile, Jackson & Kansas City Railroad Company and The Gulf & Chicago Railway Company, if to be found in your county, to appear before the Chancery Court of the county of Pontotoc in the State of Mississippi, at a term of said court to be held on the 1st Monday in September, A. D. 1904, at the Courthouse in the town of Pontotoc, Mississippi, then and there to plead, and answer or demur to the Original Bill of The State of Mississippi, by William Williams, Attorney General, and The Railroad Commission of Mississippi, S. D. McNair, President, and J. C. Kincannon and R. L. Bradley, members, to which they are defendants. And have there then this Writ.

Given under my hand and the seal of said Court, and issued this the 3rd day of August, A. D., 1904.

W. T. FURR,
Clerk Chancery Court, Pontotoc County, Mississippi.
By W. J. LYON, D. C.

[Endorsed on back:]

No. 1581.

PONTOTOC COUNTY, MISSISSIPPI.
CHANCERY COURT.

State of Mississippi, et al.,
vs. **Summons.**
M. J. & K. C. Railroad Company, et al.

Issued August 3, 1904. Returnable 1st Monday of September, A. D., 1904. Received by me, this the 4th day of August, A. D., 1904.

J. C. WALLACE,
Sheriff Tippah County, Mississippi.

Returned and filed, this 13th day of August, A. D., 1904.

W. T. FURR,
Clerk Chancery Court.

Fees of J. C. Wallace, Sheriff:

Serving summons on 1 defendant	$1.50
Serving summons on 1 defendant	$1.50
Entering and returning writ	.50
Total	$2.00

I have this day executed the within writ personally by delivering a true copy thereof to C. F. Morgan, one of the incorporators and directors of the within named defendant, Gulf & Chicago Railway Company, and also acting as Superintendent of the Gulf & Chicago division of the within named defendant, Mobile, Jackson & Kansas City Railroad Co.

Witness my hand the 11th day of August, 1904.

J. C. WALLACE, Sheriff Tippah Co.

ANSWER TO ORIGINAL BILL.

The State of Mississippi, et al.,
vs.
Mobile, Jackson & Kansas City Railroad Company, et al.

The answer of the defendants to the Bill of Complaint exhibited against them by the State of Mississippi, by William Williams, Attorney General, the Mississippi Railroad Commission, and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, members, Complainants in the Chancery Court of Pontotoc County, on the 3rd day of August, 1904, and numbered 1581 on the docket of said court.

These defendants now and at all times saving and reserving unto themselves all benefit of exceptions to the many errors and uncertainties in said bill contained, answering say:

1. They admit that complainant, the Mississippi Railroad Commission, constituted and existed and charged with the duties as is alleged and set forth in said bill.

2. Defendants admit the organization of the Gulf & Chicago Railway Company with authority to construct and operate a railroad as is alleged and set forth in paragraph 2 in said bill.

3. They admit that at the time of the organization of

the Gulf & Chicago Railway Company aforesaid, there was then in existence and then being operated from the town of Pontotoc in the State of Mississippi, to the town of Middleton, in the State of Tennessee, a narrow gauge railroad corporation known as the Gulf & Chicago Railroad Company; that said narrow gauge road was built about the time, and has been operated and in existence, as is alleged in paragraph 3 of said bill.

4. Denies that said Gulf & Chicago Railway Company was bound by its acquisition of the said narrow guage line from Pontotoc, Mississippi, to Middleton, Tennessee, to continue and preserve intact, throughout its entire length, said line of railroad from the town of Pontotoc north, and the consolidated corporation of the Gulf & Chicago Railway Company, and its lessees, the Mobile, Jackson & Kansas City Railroad Company, were in turn bound to so continue and preserve intact the said line, broadened and standardized, and denies that it was so stipulated in the articles of consolidation. But defendants allege and charge that by its charter the Gulf & Chicago Railway Company was authorized to construct its line of road from a point near Decatur, Mississippi, in a northerly direction, through the county of Pontotoc, to the town of Brownfield, in the county of Tippah, and by the articles of consolidation the present constructed narrow guage railroad acquired from the Gulf & Chicago Railroad Company, and running from the town of Pontotoc, Mississippi, to Middleton, Tennessee, will be broadened and standardized and will thereupon become a part of the line operated by the said consolidated corporation, all of which said stipulations and requirements are strictly carried out by defendants.

5. Admits that prior to the 6th day of July, 1903, said railway companies and other companies were consolidated under the name of the Gulf & Chicago Railway Company as mentioned in said bill; admits that on the 6th day of July, 1903, a petition was presented to complainant, the Mississippi Railroad Commission, by the attorneys for consolidated corporation, praying the approval of the said railroad commission of the said consolidation; that in said petition it was stipulated and by the granting of said petition by said railroad commission it was agreed that the said consolidated corporation should broaden and standardize the said narrow line running north from the town of Pontotoc, but

denies that it was to be broadened and standardized as it then existed and was being operated throughout its entire length, and defendants allege the fact to be that prior to the filing of the petition with the railroad commission of Mississippi seeking its approval of said consolidation, the agents and officers of said railroad companies had caused surveys to be made through the town of Pontotoc with the view to best subserving the interests of the people of that community in the location of its line and the establishment of its depot in said town, that the making of said surveys and the preparation of maps, plans and profiles showing in detail the physical conditions existing in and around the town of Pontotoc affecting the construction of the said line, it became apparent that it would be impossible to utilize that portion of the narrow gauge line, extending from the depot of the said narrow gauge line in the town of Pontotoc north about one mile; and defendants further allege that a public meeting was held in said town of Pontotoc, which had been duly and extensively advertised and which was largely attended by the citizens thereof; that said meeting was held prior to the making of said application for the consolidation of the said railroad companies to the Mississippi Railroad Commission, and that at said meeting the reasons for abandoning the part of the narrow gauge line hereinbefore mentioned, were fully explained to the people of Pontotoc assembled in said meeting and by an overwhelming majority of those present the position taken by the officers and agents of the railway companies were acquiesced and approved, and the location of the line and the selection of the site of the depot of the defendant, the Gulf & Chicago Railway Company, was approved by said meeting, all of which was known to the people of Pontotoc. And defendants further allege that before the filing of the bill in this case by the complainant, the Mississippi Railroad Commission, it had located and constructed said line as proposed at said public meeting in the town of Pontotoc, had purchased a depot site, and erected a handsome and commodious depot on said site, into which it is now operating a standard gauge railroad; all of which was being done before and prior to the filing of the bill in this cause.

6. Defendants admit that on or about the date of the approval of the consolidation of said companies the defendant, the Gulf & Chicago Railway Company, executed a lease to defendant,

the Mobile, Jackson & Kansas City Railroad Company, of the property and for the time and since the execution of said lease the said defendant, the Mobile, Jackson & Kansas City Railroad Company, has been in the possession and operation thereof as is alleged and set forth in said bill.

7. Denies that said Gulf & Chicago Railway Company, in violation of the terms and in disregard of said representations contained in its petition for approval of the said consolidation by this commission to the effect that the said narrow gauge line of railroad extending from the town of Pontotoc, Mississippi, to Middleton, Tennessee, should be broadened and standardized throughout its entire length and made a part of the line of said consolidated corporation authorized to construct by its charter, has, as complainants are informed and believe and charged broadened and standardized the said narrow gauge line from Middleton, Tennessee, southward to a point about one miles and a half from the end of said line within the said town of Pontotoc and the said defendant, lessee, the said Mobile, Jackson & Kansas City Railroad Company, is now operating said line so changed to the said point to which it has been broadened and standardized and the remaining part of said line has been abandoned. Defendants admit that about one mile of said road has been abandoned; but aver that said abandonment was had or made with the consent and approval of the citizens of the town of Pontotoc, at a duly advertised public meeting thereof. And defendants deny that that part of said road so abandoned is the most valuable and the most important of said road; deny that said road extends through a thickly populated district to the principal portion of said town of Pontotoc; deny that the representation of the consolidated corporation that it would broaden and standardize the said line of railroad extending into the town of Pontotoc as the said line was on the date of the said consolidation being operated was a material consideration in passing upon said petition, and the said consolidation would not have been approved but for the said representations and deny that any such representations were made.

8. Defendants admit that a part of said line has been abandoned and its operation discontinued and defendants have refused to broaden and standardize it; but allege the fact to be

that complainant, the Mississippi Railroad Commission, made an order in the month of January, 1904, requiring defendants to build a depot on that part of the line of said narrow gauge road since abandoned, the enforcement of which order has been enjoined and restrained by the order of the United States Circuit Court for the Southern District of Mississippi, which suit is now pending in said Circuit Court; and defendants further allege that the said order of the Railroad Commission of the State of Mississippi required defendants to construct said depot on the old site of the depot used by the former narrow gauge line, and allege that said site is outside of the original town of Pontotoc; defendants further allege that complainants, the Mississippi Railroad Commission, is still insisting upon the enforcement of said order and resisting the efforts of defendants to restrain its enforcement; and defendants further allege that said order is wholly inconsistent with the bill in this case, which requires defendants to construct its line and to build its depot within the original town of Pontotoc.

9. Answering the allegation contained in paragraph 9 of said bill, defendants say that they are not informed as to whether the narrow gauge line formerly occupied and operated into the town of Pontotoc was constructed with a view to extending it south of said town or not, but allege the fact to be that the line of railroad now being constructed by the Gulf & Chicago Railway Company, one of the defendants herein from Decatur, Mississippi, to Jackson, Tennessee, is being constructed upon a wholly different scheme of grades from that upon which the narrow gauge line was constructed, and further alleges that the grade necessarily adopted for the construction of said standard gauge line of railroad is such that will enable it to transact its business with the least expense and with the view to enabling it to successfully meet the competition of other lines. Defendants allege that if the grades upon which the Gulf & Chicago Railroad Company (a narrow gauge line) had been constructed and had been adopted for the standard gauge line of defendant, the Gulf & Chicago Railway Company, it would have been practically impossible to operate said railroad successfully because of the heavy grades; would have put defendant Railroad Company to an additional cost of construction exceeding Ninety Thousand ($90,000.00) Dollars, would have materially lengthened the line of said railway

company, and would have enormously incread the fixed charges of maintaining said property, and would have largely increased the cost of operating it, and would have increased the cost to defendants of transacting all interstate commerce business from Mobile, Alabama, through the states of Alabama, Mississippi, and Tennessee. Defendants deny that said town of Pontotoc has been building for the past twenty years with reference to the line of the narrow gauge railroad, as alleged in paragraph 9 of said bill, but allege the fact to be that said narrow gauge line of railroad and the depot formerly used in connection with it were located in the town of Pontotoc with reference to the town then built and wholly without intelligent consideration being given to either the cost of constructing for operating a standard gauge railroad south from the town of Pontotoc as an extension of said narrow gauge line. Defendants deny that a change of said line, as alleged in paragraph 9 of said bill will disturb established conditions and practically break up a prosperous community for the benefit of defendants and a few property owners in another part of the town, but allege the fact to be that an overwhelming majority of the people living in the town of Pontotoc and owning property therein are entirely satisfied with existing conditions and recognize fully the necessity for the establishment of said conditions by defendants.

10. Defendants will admit that the original town of Pontotoc is the county seat of Pontotoc County, as fixed by an act of the legislature of the State of Mississippi, on the.....day of 18.. ....., in so far as the government of the county is concerned, but do not believe and so charge that it does not apply to the construction of railroad lines in or through said town. Admit that section 187 of the Constitution of the State of Mississippi provides as is set forth in said bill. Defendants deny that defendant, the Gulf & Chicago Railway Company, is building its line of road through a recent addition to the town of Pontotoc, but not through that part of said town which is the county seat, if the original town of Pontotoc is the county seat of the county of Pontotoc, and within less than three miles therefrom without passing through the same. Deny that there are no natural obstacles to prevent defendant company from building its line through the said county seat, the original town of Pontotoc; and deny that the people of the said town of Pontotoc stand ready to grant the

right of way through the limits of the county seat, the original town of Pontotoc, and sufficient grounds for depot purposes. Defednants deny that the said Gulf & Chicago Railway Company of any other railway company, now owns or ever owned a right of way through a large part or any part of said county seat, if the original town of Pontotoc is the county seat of Pontotoc county, and sufficient grounds for depot purposes, and that the Gulf & Chicago Railway Company or any other railroad company ever ran its line or any part of its line of road through the original town of Pontotoc, and its depot was located on lot No. 40 on the north half of section five, township 10, range 3 east, which the same addition to the town of Pontotoc with the present line of said railroad and depot as now located, neither of which was ever in the original town of Pontotoc, but both within the corporate limits of the town of Pontotoc.

11. Deny that the conduct of said defendants in undertaking to build their said line just outside of the limits of the county seat if the original town of Pontotoc is the county seat, is in violation of said section 187 of the Constitution, in wilful disregard of the law and order of the complainant, the Railroad Commission, and shows a reckless indifference to the rights of the people long established. And defendants charge that, as a matter of law, the operation of Article 187 of the Constitution of the State of Mississippi was temparorily suspended by the proviso thereto, and that said condition or proviso has never been complied with, either by the town of Potntoc or the citizens thereof, and deny that any offer to comply with said proviso has been made by the town or the citizens thereof.

12. Deny that the said defendants are actually engaged in the said violations of the laws of the State of Mississippi and the order of the Commission approving the consolidation aforesaid and of the rights of the public. And now having fully answered pray that the injunction heretofore granted in this cause be dissolved and defendants discharged with their reasonable costs, etc. And defendants will ever pray, etc.

McIntosh & Rich,
J. W. T. Falkner,
Fontaine & Fontaine,
Solicitors for Defendants.

THE STATE OF MISSISSIPPI, Pontotoc County.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for said county, W. J. Shannon, who after being duly sworn, says on oath: That he is agent of the defendant railway company and that all of the allegations and denials in this said answer contained as made of his own knowledge, are true as stated and those made on information and belief he believes to be true.

W. J. SHANNON.

Sworn to and subscribed before me this 11th day of April, 1905

W. T. FURR, Chancery Clerk.

Filed, September 22, 1904.

W. T. FURR, Chancery Clerk.

Filed, September 22, 1904.

L. E. OLDHAM, Clerk.

Petition for Removal.

IN THE CHANCERY COURT OF PONTOTOC COUNTY, STATE OF MISSISSIPPI.

The State of Mississippi, et al., Complainants,

No. vs.

M. J. & K. C. R. R. Co., et al., Defendants.

To the Honorable H. L. Muldrow, Chancellor of the Chancery District of Mississippi, holding the Chancery Court, Pontotoc County, in said State:

The petitioners, the Mobile, Jackson & Kansas City Railroad Company, and the Gulf & Chicago Railway Company, respectfully show that both are made defendants to the above entitled suit; that the matter in dispute therein exceeds, exclusive of interest and costs, the sum or value of two thousand dollars; that the suit is of a civil nature in equity, it being a bill filed by the State of Mississippi by William Williams, Attorney General, the Mississippi Railroad Commission, and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, members, to enjoin the defendants from constructing and operating a certain line of railroad from Decatur, Mississippi, to

Middleton, Tennessee, or any other line of railroad from any point whatsoever to any other point passing within three miles of the county seat of Pontotoc County, Mississippi, as the county seat was originally marked and established, without passing through the same, and from any further proceedings against the complainant's touching any of the matters set out in said bill. That the suit is of a civil nature in equity and arises under the constitution and laws of the United States as follows, to-wit:

Your petitioners respectfully show to your Honor, that the defendant, the Mobile, Jackson & Kansas City Railroad Company, at and about the commencement of this suit, being a company organized and incorporated under the laws of the states of Alabama and Mississippi, was operating and is now so engaged, operating an interstate line of railroad, extending from the city of Mobile, in the State of Alabama, to the City of Hattiesburg, in the State of Mississippi, a distance of one hundred miles, and from Beaumont to Bay Springs, in the State of Mississippi, a distance of sixty-six miles; and petitioner further shows that it is engaged in the further construction of its line to the town of Decatur in the county of Newton in said State of Mississippi, and expects within the next few months to have the same completed and in operation to said point. Petitioner further shows that in the early part of the year, 1903, there was organized under the laws of the State of Mississippi, a railway corporation known as the Gulf & Chicago Railway Company, with authority to construct a standard gauge track from a point at or near the town of Decatur in Newton County in a general northerly direction through the state to the Tennessee line; and petitioners further show that at or about the same time there was organized under the general laws of the State of Tennessee, and under the name of the Gulf & Chicago Railway Company, of Tennessee, with authority to construct a railroad from a point at or near Brownfield on the boundary line of the State of Mississippi and Tennessee, in a general northerly direction, to the city of Jackson, in the State of Tennessee. Petitioners further aver that at the date of the organization of the two companies aforesaid there was in existence and being operated from the town of Pontotoc in the State of Mississippi, to the town of Middleton, Tennessee, a narrow gauge railroad by a company chartered under the laws of the State of Mississippi and Tennessee, and known as the Gulf &

Chicago Railroad Company. Petitioners aver that by agreement of these companies, through the officials of each and under the laws of the State of Mississippi and of Tennessee, these several companies were duly consolidated as one corporation, on the 25th day of June, 1903, under the name of the Gulf & Chicago Railway Company, and on the 6th day of July, 1903, said consolidation was in all things ratified and confirmed by order of the Mississippi Railroad Commission. Petitioners further show that on the first day of July, 1903, the Gulf & Chicago Railway Company consolidated as aforesaid, executed and delivered to the Mobile, Jackson & Kansas City Railroad Company, a lease of all its railroad property then constructed and operated and that to be constructed thereafter, including the narrow gauge railroad from Pontotoc to Middleton in the State of Tennessee, and also all extensions and branches thereof which said Gulf & Chicago Railway Company may construct, including its entire proposed line from the town of Decatur in the State of Mississippi to the city of Jackson in the State of Tennessee for the period of ninety-nine (99) years. Petitioners further aver that since the execution of said lease, the Mobile, Jackson & Kansas City Railroad Company has been in the control and operation of the said line of narrow gauge railroad between the town of Pontotoc, Mississippi, and Middleton, Tennessee, engaged in carrying the United States mail and in carrying freight and passengers between the states of Mississippi and Tennessee, that it is also engaged in a general instertate business between the states of Alabama and Mississippi as aforesaid, carrying the mails of the United States and freight and passengers to and from the city of Mobile, in the State of Alabama, and Hattiesburg, Laurel and intermediate points in the State of Mississippi. Petitioners aver that the Gulf & Chicago Railway Company, consolidated as aforesaid, is actively engaged in the construction of its lines, heretofore leased to the M. J. & K. C. R. R. Company, from the town of Decatur, in the State of Mississippi, to the city of Jackson, in the State of Tennessee, and that when the said line is completed from Decatur, Mississippi, to Jackson, Tennessee, and the line of the Mobile, Jackson and Kansas City Railroad Company is completed from Mobile, Alabama, to Decatur, Mississippi, the Mobile, Jackson & Kansas City Railroad Company will have and operate one continuous line of railroad from Mobile, in the State of Alabama, in a general northerly direction through the states

of Alabama, Mississippi and Tennessee, to the city of Jackson in said last named state. Petitioners further aver that by the terms of the said lease, the Gulf & Chicago Railway Company, consolidated as aforesaid, obligated itself to broaden and standardize its narrow gauge road, to be used as a part of its line which it had agreed to construct and is now engaged in constructing to Decatur, Mississippi, from Jackson, Tennessee.

Petitioners further show that in pursuance of this agreement, the Gulf & Chicago Railway Company has surveyed and located its line from Decatur, in the State of Mississippi, to Middleton, in the State of Tennessee, through the county and town of Pontotoc in the State of Mississippi. That the line has been graded through the town of Pontotoc, site selected and condemned and a depot erected thereon within the corporate limits of the said town of Pontotoc as is required by section 187 of the Constitution of the State of Mississippi; that the said line through the town of Pontotoc was adopted with reference to the general scheme of grades established for said entire line and the depot has been built in said town on said site and line and is at a point thereon best adapted to that purpose.

Petitioners further aver that when the line is completed from the city of Mobile in the State of Alabama to the town of Decatur in the State of Mississippi, and when the line of the Gulf & Chicago Railroad Company (leased by the Mobile, Jackson and Kansas City Railroad Company) is completed from the town of Decatur, Mississippi, to the city of Jackson, in the State of Tennessee, the Mobile, Jackson & Kansas City Railroad Company will be engaged in the conduct of a general instertate railroad business in the carrying of passengers and freights and the United States mails between the said states of Alabama, Mississippi and Tennessee.

That at the date of said lease the said lessor was operating the said narrow gauge railroad into the town of Pontotoc, Mississippi, and there had been for years maintained by the former owners of said road a depot in said town of Pontotoc, Mississippi, located at a point about one-half a mile distant from the main line of the Gulf & Chicago Railway Company, as surveyed and graded and operated through the limits of the town of Pontotoc. That in the month of February, 1903, this depot was destroyed by fire and has not been rebuilt because of the general location

of the line other and different from the narrow gauge road through the town of Pontotoc, and petitioners now aver that notwithstanding the line had been surveyed and graded through the town of Pontotoc and the depot site condemned and located and a depot built thereon, the Mississippi Railroad Commission, on the 12th day of January, 1904, made and promulgated an order requiring the Gulf & Chicago Railway Company to erect and maintain a new depot on the old site of the narrow gauge road the work to commence not later than the 20th day of January thereafter; petitioners further show that on the 1st day of March, 1904, the Mobile, Jackson & Kansas City Railroad Company filed in the United States Circuit Court for the Southern District of Mississippi, its bill praying for an injunction against the enforcement of the said order to rebuild the depot in accordance with the order of the Railroad Commission, and on the same date Judge H. C. Niles, District Judge of the United States and presiding therein, issued an order granting a temporary injunction and commanding the said Mississippi Railroad Commission to appear and show cause why the same should not be granted; that on the 4th day of May, the said Railroad Commission filed an answer and appeared before the said Judge and after hearing the cause fully, the said Judge retained jurisdiction of said cause and granted the temporary injunction as prayed in the complainant's bill, which said cause is now pending and undetermined in said court.

Copies of the bill and answer and all the orders are herewith filed as Exhibit "A" to this petition and asked to be considered as a part hereof; petitioners further show that every question now involved in the litigation in this case is involved and can be determined in the other now pending in the circuit court of the United States at Jackson, Mississippi, and that the enforcement of the orders of the Mississippi Railroad Commission as prayed in the bill for and now ordered in this case imposes a direct and unnecessary burden upon interstate commerce and is therefore in violation of and in conflict with section 8, Article I, of the Constitution of the United States, which gives to the Congress of the United States the exclusive power to regulate commerce among the several states, and further, that the said order is a direct and unnecessary interference with the speedy carriage of the mails of the United States and the speedy discharge of the

duties of the petitioners as interstate carriers of freight and passengers.

Your petitioners further show to the Court that said Chancery Court of the County of Pontotoc is a court of the State of Mississippi, that this suit is now pending in said court; and that this petition is filed in said court at the time, or before your petitioners are required by the laws of the State of Mississippi, or the rule of the said Court, in which this bill is filed, to answer or plead to the complaint of the said complainants.

Your petitioners offer herewith a bond with good and sufficient surety, for its entering in the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi for the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by the said United States Circuit Court, if the said court shall hold that this suit was wrongfully or improperly removed thereto; and for your petitioner then and there appearing and entering special bail was originally required.

Your petitioner prays that this court proceed no further herein except to make an order of removal, and to accept the said surety and bond and cause the record herein to be removed into said court of the United States in and for the Eastern Division of the Northern District of Mississippi at Aberdeen in said state.

The Mobile, Jackson & Kansas City R. R. Co.,
The Gulf & Chicago Railway Company,
By McIntosh & Rich,
Fontaine & Fontaine,
J. W. T. Falkner,
Attorneys.

THE STATE OF MISSISSIPPI, Lafayette County.

I, J. W. T. Falkner, being duly sworn, do say that I am an attorney for the Mobile, Jackson & Kansas City Railroad Company and for the Gulf & Chicago Railway Company, the petitioners in the foregoing entitled cause; that I have read the foregoing petition and know the contents thereof; that the statements and allegations therein contained are true as I verily believe.

J. W. T. FALKNER.

Sworn to and subscribed before me this the 8th day of August, 1904. J. G. RAMSEY, Chancery Clerk.

BOND.

IN THE CHANCERY COURT OF PONTOTOC, STATE OF MISSISSIPPI.

The State of Mississippi, et al., Complainants,

vs.

Mobile, Jackson & Kansas City Railroad Company, et al.

KNOW ALL MEN BY THESE PRESENTS, That the Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railway Company as principals, and J. W. T. Falkner and J. D. Fontaine, sureties, are held and firmly found unto the State of Mississippi and the Mississippi Railroad Commission, in the penal sum of $250 for the payment of which well and truly to be made, we bind ourselves, our successors, heirs, representatives and assigns, jointly and severally, firmly by these presents; yet upon conditions: The said Mobile, Jackson & Kansas City Railroad Company and the said Gulf & Chicago Railway Company, having petitioned the Judge of the Chancery Court of Pontotoc County, Mississippi, for the removal of a certain cause pending therein, wherein the said State of Mississippi and the Mississippi Railroad Commission is complainant and the said companies are defendants to the Circuit Court of the United States in and for the Eastern Division of the Northern District of Mississippi.

Now if the said obligors, petitioners, shall enter in said court on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States if said Court shall hold that said suit was wrongfully or improperly removed thereto, and shall then and there appear and enter special bail in said suit, if special bail was reginally requisite therein, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seal this the day of August, 1904.

The Mobile, Jackson & Kansas City R. R. Co.,
The Gulf & Chicago Railway Company,
By J. W. T. Falkner, Attorney,
J. W. T. Falkner, Surety.
J. D. Fontaine, Surety.

The above bond approved and filed, August 16, 1904.
W. T. FURR, Clerk.

Petition, Bond and Exhibits filed, August 16, 1904.
W. T. FURR, Clerk.

DECREE.

IN THE CHANCERY COURT OF PONTOTOC COUNTY, MISSISSIPPI

The State of Mississippi, et al.

No. 1581. VS.

Mobile, Jackson & Kansas City Railroad Company, et al.

This day this cause came on to be heard and was heard on the motion of the defendants to remove the same to the United States Circuit Court for the Eastern Division of the Northern District of Mississippi, sitting at Aberdeen, Mississippi, and thereupon defendants presented their petition for the removal of said cause and filed therewith a bond in the penalty of Two Hundred and Fifty Dollars ($250.00), payable and conditioned according to the law, with J. W. T. Falkner and J. D. Fontaine as sureties thereto; therefore the Court doth hereby accept said petition and approve said bond and sureties and doth hereby order, adjudge and decree that said motion be and the same is hereby sustained and that said cause is hereby removed to said United States Circuit Court at Aberdeen, Mississippi, and that the Clerk of this Court make and file in said Court on or by the 1st Monday of October, 1904, a complete and perfect copy of the proceedings in this cause.

Ordered, adjudged and decreed this the 5th day of September, 1904.

H. L. MULDROW, Chancellor.

Filed, September 5, 1904.

W. T. FURR, Clerk.

Petition to Modify Injunction.

In the Circuit Court of the United States of America for the Eastern Division of the Northern District of Mississippi, Sept. 23, 1904.

The State of Mississippi, et al.,

vs.

M. J. & K. C. R. R. Co., et al.

To the Honorable H. C. Niles, Judge of the District Court of the State of Mississippi:

To defendants in the above styled suit respectfully represent and show unto your Honor that complainants in said cause exhibited their bill of complaint in the Chancery Court of Pontotoc County, Mississippi, praying that defendants be temporarily restrained from constructing and operating their line of railroad passing within three miles of the county seat of said county of Pontotoc without passing through the same, and upon final hearing that they be perpetually enjoined from building and operating a road along said route and commanding them to broaden and standardize the said line of railroad extending into the county seat of said county of Pontotoc as it had been established for years, as the consolidation corporation agreed to do from the point north of said county seat, from which said narrow gauge line had been abandoned, and the said defendants be required to operate the said line into the said county seat as a part of the line built and to be built from Decatur, Mississippi, to Jackson, Tennessee, and that they be commanded to extend the said line on through the said county seat as required by section 187 of the Constitution of the State of Mississippi, and as required by law and by the order of the complainant, the Mississippi Railroad Commission, and for general relief. That upon the prayer of the said bill and injunction was issued and served on the defendant and is now in full force and effect, except as to an agreed modification thereof, allowing defendants to run its trains and deliver freight and passengers at its depot as now located within the corporate limits of the town of Pontotoc; petitioners further show that they have established their material station at a point about one mile north of the town of Pontotoc, and upon their said line of railroad and all of the iron necessary for the construction of their line through the said town, and for several miles south and in the direction of Houston, Mississippi, and all of the bridge timbers and cross-ties to be used in the construction south of the town of Pontotoc is now on the ground at a point about one mile north of the corporate limits of said

town, the iron is received at New Albany, Mississippi, the junction point of the 'Frisco Road and carried to said material station, that said cross-ties are distributed along the line from said material station for several miles south of the town of Pontotoc, Mississippi, all of which was done before the issuance and service of the injunction upon the defendants. The said injunction absolutely prohibits the defendants from constructing its line of road from the present location of the depot within the corporate limits of the town of Pontotoc, by reason of the fact that there is no way of transporting said material over that portion of its line incomplete within the three mile limit of the original plan of the town of Pontotoc and this can only be accomplished by re-shipping all of its material now located at the material station aforesaid back to New Albany and then around by the I. C. Railroad or M. & O. Railroad to Ackerman, Mississippi, or the M. & O. and Frisco to Okolona, and then to Houston, a point where defendants have no locomotive, cars or other facilities for moving the building material for its road and which would result in a great loss of time, delay and a great expenditure of money by defendants. That the citizens along the said line of road will by reason of the said delay be deprived of railroad facilities for an indefinite length of time.

Petitioners further show to your Honor, that the said case has been removed on the petition of the defendants to this Honorable Court by a petition made and entered at the September Term of the Chancery Court of Pontotoc County and the records have been filed in this court by the clerk thereof on the 22nd day of September, 1904, where the said case is now pending.

Petitioners further show to the Court that no injury can possibly result to the complainants in said cause by a modification of the said injunction so as to allow these defendants to lay a temporary track from the depot now located on its main track within the corporate limits of the said town of Pontotoc and to build temporary bridges for the sole purpose of transporting its material through the town and constructing its road bed south from said town in the direction of Houston, Mississippi, where all of the grading is about completed. The said modification to be granted without prejudice to either party to this litigation and to abide the final result thereof.

The premises considered, the prayer of the petitioners is

that the injunction be modified so as to allow the defendants in the said cause to lay a temporary track or tracks and to build necessary bridges for the purpose of transporting its material through the three mile limit of the town and so it can go forward with the construction of its road bed south and beyond the three mile limits of the town pending this litigation.

And as in duty bound the petitioners will ever pray, etc.

McIntosh & Rich,
Fontaine & Fontaine,
J. W. T. Falkner,
Attorneys for Petitioners.

Sworn to and subscribed before me this the 22nd day of September, 1904.

L. O. Oldham,
Clerk U. S. Circuit Court.

Filed, September 22, 1904.

L. E. Oldham, Clerk.

Order to Modify the Injunction.

United States of America,
U. S. Circuit Court, Eastern Division of the Northern District of the State of Mississippi.

The State of Mississippi, et al.,

vs.

Mobile, Jackson & Kansas City Railroad Company, et al.

This day came on to be heard Defendant's petition to modify the injunction heretofore issued in this cause in so far as to allow defendants to build temporary track and bridges on its line of road as the same is graded within three miles of the county seat of Pontotoc and which does not run through the original plan of the town of Pontotoc, for the purpose solely and exclusively of carrying and transporting its necessary materials for the construction and completion of its line of road without and beyond the three mile limit of the original plan of the town of Pontotoc and it appearing to the satisfaction of the Court that the modification of said injunction can and will operate an injury to no one, but

will prevent an irreparable injury to both defendants and communities along the line of defendant's road as located beyond said three mile limit.

It is therefore ordered, adjudged and decreed that defendants petition be sustained and that the prayer of said petition be granted and the injunction heretofore granted in this cause be and the same is hereby so modified as to allow and permit defendant to construct temporary track and bridges over its line within the three mile limit of the original plan of the town of Pontotoc solely and exclusively for the purpose of transporting and conveying its material over and across that part of its road situated within the three mile limit of the original plan of the town and not running through same to construct its road south of said depot as now located in town of Pontotoc and beyond and south of said three mile limit without prejudice to either of the parties to this cause.

Ordered adjudged and decreed in vacation, this the 25th day of September, 1904.

H. C. NILES, Judge.

TESTIMONY FOR COMPLAINANT.

Mobile, Jackson & Kansas City Railroad Company
vs
The Mississippi Railroad Commission et al.

The testimony of witnesses on behalf of complainant, taken under and pursuant with the agreement of counsel hereto attached.

F. E. Dewey, being duly sworn by a Notary Public, testified as follows on behalf of complainant:

The testimony of witnesses on behalf of complainant, taken under and pursuant with the agreement of counsel hereto attached:

DIRECT EXAMINATION.

QUESTION. What is your occupation, Mr. Dewey?

ANSWER. Vice-President and General Manager of the Mobile, Jackson & Kansas City Railroad Company.

Q. The complainant in this case?

A. Yes, sir.

Q. How long have you been Vice President and General Manager of that Company?

A. Since November 1, 1903.

Q. How long have you been engaged in the Railroad business?

A. Thirty years.

Q. What experience have you had in official positions?

A. Various official positions for the last sixteen years. In charge of transportation, traffic and maintenance.

Q. Is the Mobile, Jackson & Kansas City Railroad Company operating the Gulf & Chicago Railway Company's property under a lease or not?

A. It is under a lease.

Q. Is that line operated into or through the town of Pontotoc in the State of Mississippi.

A. It is operated from Middleton, Tennessee, into Pontotoc, Mississippi.

Q. It is not operated south of Pontotoc, is it?

A. No, sir.

Q. Now from Middleton, Tennessee to Pontotoc, what character of business are you doing? What are you carrying?

A. Very largely cotton and cotton products and merchandise.

Q. And freight and passengers?

A. Freight and passengers.

Q. Are you carrying United States mail?

A. Yes, sir.

Q. Between Middleton, Tennessee, and Pontotoc, Mississippi,

A. Yes, sir.

Q. To what extent is the narrow gauge line formerly op-

erated from Pontotoc to Middleton, Tennessee been standardized?

A. From Pontotoc to Ripley.

Q. What distance is that approximately?

A. Thirty-seven miles.

Q. Something over half the mileage?

A. Yes, sir.

Q. What work is being done between Decatur and Middleton, Tennnessee?

A. The grading is complete the entire distance and about sixty-five miles of the track is laid, a number of stations completed and work is in progress now—the work of completion.

Q. Is it not the purpose and intention of this company to construct a line from Decatur, Mississippi, to Jackson, Tennessee?

A. It is the purpose to construct a line to Pontotoc and standardize the line from Pontotoc to Middleton, beyond that I am not informed.

Q. You are not familiar with the conditions?

A. I am not familiar with it.

Q. Now, what connections with other lines will you have between the City of Mobile and say Middleton, Tennessee, when that line is completed?

A. Including Mobile?

Q. Yes.

A. At Mobile the Louisville & Nashville, the Southern Railway and Mobile & Ohio; at Hattiesburg, Mississippi, the Southern, Central, New Orleans & Northeastern, the Gulf & Ship Island; at Laurel, the N. O. & N. E. and Gulf & Ship Island; at Newton the Alabama & Vicksburg; at Matheson, the Southern Railway; at Worcester, the Southern Railway; Ackerman, the Illinois Central Railroad; at New Albany the Frisco system and Middleton, Tennessee with the Southern Railway.

Q. Mr. Dewey, when this line is completed as proposed, will you be in competition in any of these lines for business into and out of Mobile for northern, eastern and western points?

A. Yes, sir.

Q. If so, what lines?

A. The Mobile & Ohio and the lines out of Mobile reaching all interior points.

Q. Do you know anything of the present located line through the town of Pontotoc, that constructed and that to be constructed. Are you familiar with the location?

A. I am familiar with the location, yes sir.

Q. Can you or not tell the reasons for locating the line as it is at present located?

A. No, I cannot. That was located and a part of the work done and was all under contract prior to my connection with the road.

Q. What effect, Mr. Dewey, would lengthening that line at Pontotoc, changing the location and lengthening the line have upon your ability to compete with these other lines mentioned?

A. Well, for the passenger traffic, the time would be important and the movement from where the old line intersects the new into and out from the old location.

Q. I speak now of changing the main line, not of operating a spur track.

A. Well, the same answer would apply to that. The addition in the time and increased cost of maintaining and operating a longer mileage.

Q. Would it in any way impose additional burdens upon passengers or upon the patrons of the road?

A. No.

Q. Would it not increase the cost of travel to passengers? Is'nt your passenger tariff, your local tariff, predicated upon the mileage?

A. It would increase the burden to purely local travel, but not to through travel.

Q. Well, it would increase the burden upon through travel, say, from Middleton, Tennessee, to points south of Pontotoc if the line was lengthened at that point.

A. Not materially.

Q. Well, I say any.

A. Yes.

Q. Of course it would not be a very large amount, but

would it not be increased to the extent that the mileage is increased?

A. On purely local travel, yes.

Q. Yes, I understand. Are you familiar with the old depot site?

A. Yes, sir.

Q. The narrow gauge site?

A. Yes, sir.

Q. What other method is there in getting into the old site except changing the main line at Pontotoc?

A. I don't know of any except operating a spur track in there.

Q. Now, Mr. Dewey, suppose you put in a spur track into a depot located at the old narrow gauge site, what effect would it have on business handled on your line?

A. It would increase the cost of handling.

Q. Well, now to what extent would that cost be increased?

A. I can only arrive at that on the basis of our expense per passenger and freight train mile.

Q. You don't know how many miles this line would be increased by that?

A. I do not.

Q. You are not familiar with that feature of it?

A. No.

Q. Now, what would the increase be in the cost per mile?

A. Operating over a spur track?

Q. Yes.

A. Our figures for twelve months show a passenger and a freight train mile revenue, of a dollar and two cents. My information is that the spur track from a point on the old narrow gauge to where it intersects the new line is substantially a mile and a half, or three miles per train, based on eight trains per day, which I believe is a conservative estimate on the completion, and it would be twenty-four miles per day increased mileage, and a dollar and two cents substantially twenty-four dollars per day to operate a spur track of that length.

Q. Now the same statement as to the cost of operation would apply to the increased mileage of the main line?

A. Yes, sir.

Q. And if your main line was increased a mile or less than

a mile, it would be in the same proportion, increase your operating expenses there?

A. Yes, sir.

Q. Do you know, Mr. Dewey, what quantity or what proportion of the work of grading the line through the town of Pontotoc was done prior to the 12th day of January, 1904? Hadn't all of the grading practically, been done?

A. January, 1904?

Q. Yes, sir, January of last year?

A. I could not state positively; my impression is that it was practically done.

Q. Well, now suppose you undertook the operation of a spur track, and you were required under the law in backing your train into the depot, over this spur track, not to exceed a speed of three miles per hour, and an employee of the company was required to precede the train to the depot, what would be the effect of that sort of thing upon your ability to compete and the cost of operation?

A. I have given the cost of operation in the statement as to the cost per mile. The time required to make this movement over the spur track would amount to one hour per train, on the basis of three miles per hour.

Q. You mean to say that each train would lose one hour?

A. Yes, one hour.

Q. In getting into and out of Pontotoc under these condtiions?

A. One hour in getting in and out of Pontotoc under those conditions.

Q. Mr. Dewey, do you know what percentage of freight received at Pontotoc is received in car load lot?

A. I could not say.

Q. You have no figures as to that?

A. I have no figures on that.

Q. Have you at any time, made any offer to the railroad Commission to settle this controversy by building a highway from the Court house to the present depot, or to build a spur track from the present main line into the old depot site mentioned in the order of the Railroad Commission?

A. We made an offer to join the town of Pontotoc in improving the road to the new station.

Q. Was there not also an offer made by you, or by your direction, to the Commission to construct a spur track from your present located main line into the old narrow guage depot site, for the purpose of delivering the freight in car load lots?

A. I don't know that that proposition was made direct to the Commission. It was made, however, by me.

Q. Well, wasn't it made subsequently to the Commission?

A. My recollection is that it was, at the hearing at Pontotoc, some years ago.

Q. Well, it was a fact that the Company was ready to do that?

A. Yes, for the delivery of car load freight.

Q. When your line is completed nad in operation, about what number of trains per day would be operated through the town of Pontotoc.

A. As already stated, I believe eight, or four each way per day is a conservative estimate.

Q. Your idea is that that would be the minimum?

A. The minimum.

Q. Now, what probably, under fairly good conditions, with the general development of the country and increased railroad business, what, probably, would be the maximum number of trains?

A. On completion?

Q. Yes, on the completion of the road?

A. It would be hard to say. I could not answer that question.

Q. As many as twice that number?

A. In the natural development of the property, yes, but not immediately on completion.

Q. I understand; but I am talking about in the general trend of development, are you prepared to state the cost of constructing that line or the cost of changing it?

A. No.

Q. What interest does the Mobile, Jackson & Kansas City and the Gulf & Chicago Railway Company pay upon its securities?

A. Five per cent. per annum.

Q. Mr. Dewey, does the Mobile, Jackson & Kansas City Railroad Company or the Gulf & Chicago Railway Company,

so far as you know, own any land in or about the town of Pontotoc, except its right of way and depot ground?

A. No, not to my knowledge.

Q. Does what is known as the Mobile Townsite Company own any property in that town, that you know of?

A. Not to my knowledge.

Q. Did you ever hear of its owning any?

A. No.

Q. Have either of these companies any interest in the development of the town, except from the effect upon its business as a common carrier?

A. No.

Q. Well, I will ask you generally, what were your gross receipts at Pontotoc for the year 1904?

A. Forty thousand eight hundred and ten dollars and twenty cents, which includes freight received and collected and prepaid forwarded tickets and miscellaneous. collections

Q. Now that is your gross revenue?

A. That is the gross revenue.

Q. About what would be your net revenue there?

A. Approximately thirty per cent.

Q. About $12,000?

A. $12,000 in round figures.

Q. What would be the interest charge on the increased mileage at Pontotoc?

A. On a mile and a half it would be fifteen hundred dollars at five per cent, per annum on its bond.

Q. That would be taking no account of your stock issue?

A. No account of the stock issue.

Q. And no account of the increased cost of operation?

A. No account of the increased cost of operation.

CROSS-EXAMINATION BY MR. FLOWERS.

Q. When did you say your connection with this company began?

A. November 1, 1903.

Q. Were you connected with the Gulf & Chicago Railway Company formerly the Gulf and Chicago Railroad Company, prior to that time?

A. No.

Q. At the time this connection began, with the Mobile

Jackson & Kansas City, had that line through the town of Pontotoc been surveyed and located?

A. It had in December, 1903. I didn't see the Gulf & & Chicago property until some time in December, 1903.

Q. How long was it after you became an officer of this company before this offer that you speak of was made to the Railroad Commission about the settlement of this controversy?

A. My recollection is that it was in January, 1904, at the hearing at Pontotoc; I would not be positive as to the month.

Q. Did you ever see the petition presented to the Mississippi Railroad Commission by the attorneys for the M. J. & K. C., and the Gulf & Chicago Railway Company, asking that the Commission ratify the consolidation of the Gulf Chicago Railway Company with others?

A. No.

Q. You never saw it?

A. I never saw it.

Q. In your capacity as General Manager and Vice President of the Company, you have had occasion to consider this controversy at Pontotoc, have you not?

A. Yes, sir.

Q. With a view of reaching some settlement of it?

A. Yes.

Q. And with a view of satisfying and observing the laws of the State of Mississippi in this regard?

A. Yes, sir.

Q. And you say that in considering this question you have never had before you that petition presented to the Mississippi Railroad Commission by those roads, when the consolidation of these companies was asked to be ratified?

A. I have not.

Q. Please state whether you know it was a part of that petition one of the stipulations in that petition that the consolidated corporation, the Gulf & Chicago Railway Company would in the event that the consolidation should be ratified broaden and standardize the narrow guage line as it was then from Pontotoc, Miss., to Middleton, Tenn.?

A. I have stated I never saw that petition.

Q. You never did have occasion to learn that that was in the petition that they would do that?

A. No.

Q. And you never knew of that fact at all, that this stipulation was in the petition.

A. I did not.

Q. You did not know that they undertook to do that?

A. As I say I know nothing of the petition or its terms.

Q. The old narrow gauge line extending from Middleton, Tennessee, to Pontotoc, Mississippi, extended to the old depot site in the town of Pontotoc, did it not?

A. Yes.

Q. How much of that line as it then existed has been abandoned in the survey and construction of the new line which passes through?

A. You mean at Pontotoc, or the entire sixty-two miles.

Q. At Pontotoc?

A. Practically a mile and a half.

Q. How much of that if you know, is within the corporate limits of the town of Pontotoc?

A, I do not know.

Q. Do you know whether any of it is within the corporate limits?

A. There must be some of it.

Q. You don't know how much?

A. Just how much I don't know.

Q. How far from the point at which the new line leaves the old line is your new depot constructed?

A. I can't give the exact distance. I think about three quarters of a mile from the old site.

Q. Mr. Dewey, when you say that the minimum number of trains would be eight, in that do you include through freight trains?

A. We would not have what you would term a through freight; we undoubtedly would, naturally, have cars coming in practically every train for Pontotoc, and I referred to eight trains as a minimum that it would necessitate being moved in and out of the spur track.

Q. You intended to embrace in that all of the trains that would run by that town in a day?

A. Yes.

Q. And your figures are based on the assumption that

all of these trains under this sort of an arrangement would have to run down on that spur track to the old depot site?

A. Yes, sir.

Q. And then you said, I believe, Mr. Dewey, if the main line had been constructed by the old depot site, that the increased cost of operation would have been in the same proportion, did you now, as it would have been if the arrangement has been to operate spur track down to the old depot site?

A. In the same ratio per mile moved.

Q. It would cost more per mile to back a train down to the depot site on a spur than it would if the same mile and a half were a part of the main line.

A. No, my figures of the cost per mile are not based on backing or running ahead, but the average cost per train mile run on the road.

Q. Did you say that the cost would be increased considerably if you had to back a train down to the old depot site?

A. Only in the proportion of the increased miles that the train was moved.

Q. How much more would it cost, we will say per train, to operate a spur track than it would if that were a part of the main line, under the assumption that you would have to back down and come out at a speed of not more than three miles an hour?

A. On the actual cost of the number of miles run, I don't know that there would be any difference. There is a difference in the time, which is an indirect cost, but is not figured in the average cost per mile.

Q. At the time your connection with this company began, how far had the road been constructed north of the town of Decatur?

A. There was grading done along there; what per cent. of the whole, I can't say.

Q. How many miles had been constructed, if you know, since December, 1903?

A. Between Decatur and Pontotoc?

Q. At any place along your line in the State of Mississippi?

A. Ninety-one miles, between Beaumont and Decatur. Part of it in operation since June, 1904. Since December, 1903, to about June, 1904, substantially sixty-five miles are now built

between Decasur and Pontotoc.

Q. At that time, December, 1903, how much did your line lack of being completed? That is, how much did you lack of having a through line from say Hattiesburg, Mississippi, to Pontotoc?

A. A line to Pontotoc would not be through Hattiesburg, Mississippi, but through Laurel and Newton.

Q. Well, take any point in Mississippi to which the line had been constructed at that time?

A. 139 miles, from Decatur to Pontotoc.

Q. That much had not been completed?

A. Yes.

Q. Now, had the line at that time been completed to Decatur?

A. No.

Q. Well, how many miles south of Decatur then?

A. It was open from Laurel to Newton, June 26, 1904.

Q. Now, what I am trying to get at is the number of miles your line had to build to get a through line after your connection with the Company?

A. Substantially 200 miles.

Q. At the time that the order was passed by the Mississippi Railroad Commission, requiring the rebuilding of a depot in the town of Pontotoc, you lacked then some 200 miles of having a through line from say Middleton, Tennessee, to Mobile?

A. Yes, sir.

Q. You were not with the Mobile, Jackson & Kansas City at the time that the depot was burned at Pontotoc, but you were with the company at the time that the Mississippi Railroad Commission passed that order requiring the rebuilding of the depot at Pontotoc?

A. Not unless it was subsequent to November 1, 1903,

Q. This order was passed, as I remember, the 12th of January, 1904. You were with the company at that time?

A. Yes, sir.

Q. And at that time you say the company lacked some 200 miles of having a through line from Mobile, Ala., to Middleton, Tennessee?

A. Yes, but the entire line was under construction.

Q. Now, Mr. Dewey, did you have anything to do with

the location of this line through the town of Pontotoc?

A. No.

Q. Did you have anything to do with determining whether that line would run along the route which it was at last constructed upon or by the old depot site?

A. Nothing, whatever.

Q. But you have had the question before you as to the advisability of running a spur track or of changing the line to the old line, have you?

A. Yes.

Q. I will ask do you know which company located this line where the road is now being built, the Gulf & Chicago Railway Company of the Mobile, Jackson & Kansas City Railroad Company?

A. I don't know.

Q. You don't know whether the lessor of the lessee?

A. I do not.

Q. Suppose at the time this question was before you it had been shown to you that your lessor had stipulated in its petition to the Railroad Commission that if they would ratify that consolidation that they would broaden and standardize that line as it then existed from Pontotoc, Mississippi, to Middleton, Tennessee, would you have considered that that would have required the lessor and the lessee to maintain that line throughout its entire length.?

Objected to by defendant because it calls for the opinion of the witness as to the effect of the consolidation, the orders of the commission and the statutes of the State of Mississippi)

A. I have absolutely no knowledge of the petition, and if the matter had been brought to my attention it would have been a matter for the Board of Directors to determine. My say-so would have had no weight whatever.

Q. But when you considered the case that fact was never before you?

A. No, my sole desire was to serve the town as a common carrier, in the best way we could, after I had knowledge of the controversy.

Q. At the time that this case was brought before you as an officer of the Company, was it ever suggested to you that the time that this narrow gauge line was located and that old depot

site built, that the company which constructed th at road agreed with the citizens of Pontotoc to put at this place, for valuable consideration which was then paid.

(Objected to because the question calls for irrelevant and immaterial testimony.)

A. I know nothing about that.

Q. That fact has never been before you in your consideration of this case.

A. Not to my recollection.

Q. Mr. Dewey, do you know how much your line from Mobile, Alabama, your main line, to Middleton, Tennessee, would be lengthened as compared with that now surveyed and upon which the road is being constructed, if you were forced to build your line by the old depot site in the town of Pontotoc?

A. I do not.

Q. Do you know how much farther it is by the nearest practicable route from the point north of the town of Pontotoc at which the old line leaves your main line, to the point south of Pontotoc at which it would again strike your new line, than the line between these two points, along the route you have surveyed and agreed upon?

A. I do not.

Q. When you say that if your Company should be compelled to build a line by the old depot site, it would affect the passenger traffic, you only mean to say that perhaps it would cost two and a half or three cents per mile more to the passenger if they had to go that route?

A. Whatever the increased mileage is at the rate per mile

Q. That is the only way it would affect it so far as you know?

A. Yes.

Q. That is it would make it necessary to haul freight or carry passengers as much farther as is the difference between those two points on your line, north and south of Pontotoc, as described in a previous question?

A. The effect would be in the cost of operation.

Q. If you should build your main line by the old depot site, what extra cost of operation, after the line is completed, would there be over the cost of operation along the line you have adopted?

A. I could not answer that question.

Q. Would there be any difference at all, except that it would necessitate the carriage of freights and passengers over a little longer distance?

A. I don't know of any other.

Q. When you say that an offer was made to the Mississippi Railroad Commission to settle this controversy, by delivering carload lots of freight at the old depot site, and also to join the town of Pontotoc in the construction of a highway from the new depot to the business part of town, how do you mean that offer was made?

A. There were two distinct and separate propositions, and as I remember it, both were discussed informally, first that we would deliver carload freight at the old site, and after that the proposition to join the town of Pontotoc in the construction of a good road from the old site to the new site.

Q. Who made that offer?

A. I made it.

Q. To whom?

A. I think, as I say, the discussion was informal. I think it was made to Mr. Bradley in the presence of Mr. Rich.

Q. That was just in an informal discussion of the matter?

A. Yes, sir.

Q. Was any offer ever made in any tangible form as to joining the town in the building of this highway?

A. My impression is that Mr. Rich made a formal offer in writing; I can't say to whom. My offer as I say, was an informal discussion of the matter.

Q. You know nothing of your personal knowledge as to the offer that Mr. Rich made?

A. No.

Q. You were not there?

A. I was not present.

Q. Mr. Dewey, you have arrangements of this kind in some places along your road?

(Objected to because the question calls for irrelevant and immaterial testimony.)

Q. Where you have constructed spur tracks or have agreed to construct them, over which trains will be backed from the main line to the town and to depots in the towns off the main line, have you such arrangements?

A. We have an agreement to do that at Decatur.

Q. And you don't understand that in any case where you might have to back into a town from your main line, you would also have to back in going out, do you?

A. One movement is backward; it's bound to be.

Q. Well, when you say it might delay you an hour to back over a mile and a half, that is based upon the assumption that you would back going and coming?

A. No, it is not. The question at a speed of three miles an hour, preceded by an employee of the Company, and I made the statement to move the three miles would necessitate an hour, complying with the regulation.

Q. But you don't know of any regulation of that kind which would require you to back at a speed of not more than three miles an hour, and then pull back on the main line at the same speed, do you?

A. No, I do not.

RE-DIRECT EXAMINATION BY MR. RICH.

Q. As I understand you when you came into the service of the Company, the line had been located, surveyed and grading practically completed to Pontotoc, or very nearly so?

A. In December, 1903, yes, sir.

Q. How are you constructing this line? Is it under a contract with the construction company?

A. Under contract with the construction company for a certain amount of bonds and stock per mile of completed road.

Q. What amount of stocks and bonds per mile?

A. $20,000 in bonds and $20,000 in stock.

Q. And the bonds bear interest at five per cent.?

A. Five per cent, per annum.

Q. You were asked just now if the sole additional cost of operating this line, if its location were changed, would not be the increase of mileage; would there be not fixed interest charged, and fixed costs of operation and maintenance thereon growing out of the increased operation of train mileage?

A. Nothing but the increased interest tax, which is not considered as a cost or considered in these figures as a cost per mile run.

Q. But would there not be other costs of maintenance of track?

A. Maintenance of track is included in the cost per mile run.

Q. Then the five per cent. interest charge would be an additional cost?

A. The additional cost, there is the cost per mile run for increased mileage.

Q. Has this company a depot at Pontotoc now?

A. Yes, sir.

Q. What character of depot?

A. Why, I cannot give the dimensions. It is a station which we designate as our number one, erected at a cost of about $3200.

Q. Is it or not one of the best stations on your line?

A. It is one of the best, and the largest we are building at any town.

Q. How long has it been constructed and in use?

A. Since some time during last summer. I am not positive as to the date.

Q. So far as you know, or since your connection with the company, has the town of Pontotco by its municipal authorities, or the people of Pontotoc ever offered you depot grounds?

(Objected to.)

A. Not to my knowledge.

Q. Or any right of way through the town?

A. Not to my knowledge.

The defendant objects to the question.

Q. Well, now you were asked about your arrangement at Decatur. Is it not a fact that the people of Decatur were offering you depot grounds all the time?

A. Yes, sir.

Q. In the town?

A. Yes, sir.

Q. And have provided you with depot grounds?

A. They have, yes, sir.

Q. And a right of way?

A. Yes, sir.

Q. Through the town of Decatur?

A. Through the town of Decatur.

ADDITIONAL EXAMINATION BY MR. FLOWERS

Q. Mr. Dewey, I believe you said if you were forced to build a spur track down to the old depot site, that it might put an annual interest charge on your company of something like fifteen hundred dollars?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. On what is that based? Do you mean to say that it would take $1500 a year to pay the interest on the money you would have to raise to construct that line down to Pontotoc and build a station there?

A. As stated, our arrangement with the construction company is to pay them $20,000 per mile in bonds and $20,000 in stock, for each mile of main track and a branch completed, and a mile and a half at $20,000 a mile would be $30,000, and at five per cent. it would equal $1500 interest charges.

Q. Do you know how much extra cost it would be if you were to build your main ine by the old depot site instead of on the route you have it?

A. I do not.

Q. Have you ever figured on that?

A. Our engineers have; I have not.

Q. You do not know whether it would cost any more?

A. I do not. That is purely an engineering matter.

Q. You stated a moment ago that the people of the town of Pontotoc had never offered you a right of way through the town. Have you ever tried to get a right of way through the town by the old depot site?

A. I have not, and to my knowledge the Company has not.

Q. The people of Pontotoc have never refused to give a right of way?

A. We have never asked for it to my knowledge.

Q. They have never had occasion to offer one, have they so far as you know?

A. I do not know that they have.

Q. Mr. Dewey, do you know how your company obtained its right of way through the town of Pontotoc where it is now being constructed?

A. No, I do not.

Q. You don't know whether it was donated or whether they bought it? Or got it by the exercise of the right of eminent domain?

A. A large part of it, as I understand it, was by eminent domain, by condemnation; I do not want, however, to make that as a positive statement.

Q. Mr. Dewey, in your figures which you have prepared, did you take into consideration that your company already owns the right of way and depot ground to and at the old depot site?

A. That is not material in the cost of construction.

Q. That is not an item to be taken into consideration?

A. Not under our contract with the construction company.

Q. I will ask you this, Mr. Dewey, did you take into consideration the fact that it would not cost as much for the construction company to build that line down to the old depot site since it has already been prepared, and already graded, fixed for a railroad?

A. No, it is not already graded and prepared for a standard gauge line. It is immaterial whether the right of way is there not, we would have to pay interest on it at $20,000 per mile.

Q. You say you have a general contract with the construction company under which they have agreed to build a railroad for as many miles as you may determine upon in the survey of this road, without regard to the conditions of the ground over which they have to build?

A. That is the idea, sir.

Q. Mr. Dewey, did you pay that much for the work of broadening and standardizing that part of the narrow gauge line north of the town of Pontotoc, which is not being operated as a standard gauge?

A. Including the purchase price of the Gulf & Chicago Railway Company road, yes.

Q. How much difference did that make?

A. I don't remember what the purchase price was for the Gulf & Chicago road,

Q. You have no idea as to these figures?

A. No, I have not.

Q. You have no idea then as to what it really cost per mile to broaden and standardize that road?

A. That is the construction Company.

Q. Yes.

A. Completed it cost the railroad company the interest on $20,000 per mile of its bonds and its stocks.

Q. But the broadening and standardizing of that part of it north of the town of Pontotoc which has been completed, cost you the difference between $20,000 and what the road cost you in the first instance?

A. That is the general idea, sir.

H. S. Jones being duly sworn on behalf of complainant, testified as follows:

DIRECT EXAMINATION.

Q. What is your present occupation?

A. Civil Engineer.

Q. How long have you been a civil engineer?

A. About twenty years.

Q. What experience have you had in locating and constructing railroads and where have you had it?

A. Well, I have been almost constantly at it; in the West with the Chicago, Rock Island & Pacific; in the South with the Illinois Central and the Mobile & Ohio; in the North with the Pennsylvania and the C. H. & D., and I am now Chief Engineer of the Appilachicola & Northern Railroad.

Q. Did you at any time, have any connection with the Mobile, Jackson & Kansas City and Gulf & Chicago Railway Company?

A. I was Chief Engineer of the Mobile, Jackson & Kansas City Railroad Company.

Q. Between what periods of time?

A. I think I came here in May, 1901.

Q. Were you in the services of the Mobile, Jackson & Kansas City and the Gulf & Chicago Railway Company, when the line of the Gulf & Chicago Railroad Company was located through and by the town of Pontotoc?

A. I was.

Q. Did you supervise and direct the location of that line?

A. I did.

Q. About what time in 1903 was that line located?

A. I think it was the early part of June, 1903.

Q. Now, Mr. Jones, did you have any difficulty in locating a line through there?

A. Well, we ran several lines to find the most economical line—to find the line that would be the most economical to build and at the same time to operate and do business over, into the town of Pontotoc.

Q. In making these investigations did you have the assistance and co-operation of the people of the town of Pontotoc?

A. I thought so, yes, sir.

Q. Just tell what occurred as nearly as you can recall it. Who did you go there with, and under what conditions?

A. I will have to begin to give you a narrative then,

Q. That is right; give the whole thing.

A. We started out in our preliminary survey and we landed in Pontotoc about a mile I reckon west of the town, outside of the corporation. Well, while it was the cheapest line to build, at the same time we did not think we were complying with the law about coming inside the corporation, providing the town would eventually give us the right of way, and the people were very much dissatisfied with it, or anyhow Mr. Merrill, the then President, and myself went to Pontotoc and we met, as I suppose, representative people of the town, and they all talked that way, and we went out to where the preliminary line crossed and everybody from the President to the citizen concluded that that was too far out; that we must get in town closer.

Q. Now, that was the first line run?

A. That was the first line run, and we discussed the thing and they showed us—that is I say "they," a few of the citizens there—showed us about where the corporation line was, and I came up town with a Mr. Mitchell and some other gentlemen. I think they called him Dr. Mitchell, and we passed right by this place which was eventually selected as a depot site.

Q. And the one now upon which the depot is built?

A. The one now upon which the depot is built, and these gentlemen pointed out to me, "Now, this would be a nice place for a depot; it is nice and level." "Well," I said, "it may look level to you, but it would take a survey to develop it; I don't think it very level, although it is a very nice looking place." Well, we came back and my understanding was that Mr. Merrill said he would have some surveys made, and in June I went up

there and had three lines run; tried to get into the town and tie on to the old original line and run down by the hole and by the depot.

Q. By the old narrow gauge depot?

A. Yes, the narrow gauge depot. That was the first line run. Our first attempt was to get into the town as close as we could and to use the old narrow gauge depot site. That was our first attempt. Then we made four surveys. The third survey was the line adopted now. The fourth survey is another line that I did not think there was much in, but I went there for the purpose of developing the country, and seeing what there was in it. The result of all those four surveys was the present location.

Q. Well, now Mr. Jones, before this location was adopted and this line now being operated was finally adopted, did you have any meetings with the citizens of the town of Pontotoc?

A. Well, I did not attend any meeting, but Mr. Merrill, the President, went up there and attended some meetings. I saw some accounts in the newspapers where he had been there and I know he had been there.

Objected to.

By Witness—I never went there after the first meeting.

Q. As a matter of fact meetings were held to discuss this location.

A. O, yes, sir! It was discussed, and meetings were held.

Q. How long were you in and around the town of Pontotoc before this location was finally made.

A. About a week I guess.

Q. Were you talking with the people, the citizens?

A. O, I had done my talking before.

Q. I mean all the time?

A. O yes, I met the citizens there, but at the time that this survey was made I don't recollect having any more than just a friendly conversation with the people there.

Q. Now, Mr. Jones, all of that time you were the Chief Engineer of these lines?

A. Yes, sir.

Q. Well, now did any official body of the municipality of Pontotoc or any citizen, or body of citizens offer you depot grounds or a right of way through the town of Pontotoc?

A. O, no.

Q. You were familiar with the location of the old town of Pontotoc? That is what is known as the old town, and the extended limits of Pontotoc, are you not, as shown by the official maps.

A. I have those maps, yes, sir. I am more familiar with the town as extended than I am with the old town.

Q. Now, Mr. Jones, are you familiar with the location of the old narrow gauge depot site?

A. Yes, sir.

Q. Upon which the order of the Commission required the construction of a depot?

A. Yes, sir.

Q. That, as I understand it, is outside of the old town of Pontotoc, and in the extended corporate limits.

A. Yes, sir.

Q. Where is our present depot location; that is also in the extended limits?

A. Yes, sir.

Q. Both depot sites are in the corporate limits of the town of Pontotoc, and in the extended part of the town?

A. Yes, sir.

Q. Now, Mr. Jones, why did you not adopt as far as it went, the old narrow gauge line into Pontotoc?

A. Because it was impracticable, too expensive in order to extend it, and get out of the town.

Q. Explain why it was; explain fully.

A. Too many hills and too many valleys, and it would require entirely too much work. It would have made the lines about three quarters of a mile longer, and it would have been a burden on traffic and a burden on the people who are building it, and eventually a burden on the community as well.

Q. Well, now what would it have cost to have constructed the line over the old narrow gauge grade through the town of Pontotoc, if it could have been constructed at all? Well, to revise the old narrow gauge road, from where the present adopted line joins it, down to the end of the old narrow gauge road, I think it is sixty-seven hundred feet. There was some one and a half to two per cent. grades on it. The lines would have all had to have been revised, the grades lowered and raised, in

order to make it conform to the grades adopted on the new line. That would have been the first thing to encounter. Then the next thing would have been the very heavy work on the line getting out, and in revising those grades there were no depot grounds sufficient to do business with at the old site, and we made an estimate that in order to standardize the old narrow gauge road for that sixty odd feet, and buy new depot grounds it would cost in the neighborhood of thirty thousand dollars, and a line to go out from the end of the old line and connect with the adopted location would cost in the neighborhood of $53,000, making a total of $83,000, that the line by the way of the Pontotoc old depot site would cost, a matter of little over three miles.

Q. Would or not the adoption of that line have affected your grades in the operation of your trains, outside of Pontotoc.

A. It would not have affected them if we had made these grades and spent this money. If we had spent this money it would not have affected the operation of the train, except to make them a little longer time.

Q. Well, you would have had to spend then about $83,000 as I understand your answer to make the grades in Pontotoc conform to the general scheme of grades?

A. Yes, sir.

Q. And it would have lengthened your main line about four-fifths of a mile?

A. Yes, it was forty-one hundred feet—that is what the distance is.

Q. Now, you say you are familiar with the old narrow gauge depot site?

A. Yes, sir.

Q. The one mentioned in the order of the Commission; what is the size and dimension of standard depot ground?

A. The Mobile, Jackson & Kansas City have adopted a strip of land 250 feet wide, and 2,000 feet long as standard depot ground.

Q. Is that generally the standard with railroads?

A. Yes, sir; that is railroads that are being constructed at this time.

Q. Is Pontotoc such a place and its business such a character as to demand that much room?

A. Yes, sir.

Q. Well, did the Company, or either of the companies, own or have control of at that time, at the old depot site, sufficient land for that purpose?

A. No, sir.

Q. Well, now it would have been necessary to have acquired what? What would we have had to take in the way of improvements and land at that point to acquire depot grounds there?

A. Well, immediately back of the old depot site there was a residence occupied by a man named Stafford, I think. Then there was an electric light and planing mill combined, that would have to have been taken, and part of the property of the Round Bale Cotton Gin Company. That is all on the Pontotoc side. Then there were two other cottages on the opposite side that would have to be acquired in that site.

Q. Have you made any estimate of what it would cost in money to have acquired that property?

A. Yes, sir.

Q. What would it have required in money?

A. About eighty-five hundred dollars to take those properties I have mentioned.

Q. Now, Mr. Jones, is that estimate based on your idea of the value of the property, or what a jury would give against a railroad company condemning it?

A. Well, part of it is based on my idea of the property together with what a jury would give and a part of it is based upon the statement of the owner himself, that he would not sell for less than five thousand dollars. I told him that I believed that if a man would come and offer him forty-five hundred dollars cash he would sell out. That was the Electric Plant and planing mill.

Q. Now, Mr. Jones, after your line was adopted through the town of Pontotoc, what quantity of work had been done prior to the 12th of January, 1904?

A. Well, to my best recollection, the work that would have to have been thrown away.

Q. But first, let's have what was done?

A. It would be ninety per cent. of it you mean all along the line?

Q. No, I mean through the town of Pontotoc, necessary to get your line in there over your survey?

A. Well, I would say ninety per cent. of the grading had been done.

Q. Then substantially all of the work except the laying of the ties and rail?

A. And bridging.

Q. And bridging had been done?

A. Yes, sir.

Q. Well, now Mr. Jones, suppose today you were called upon

Q. Well, now, Mr. Jones, suppose today you were called upon to abandon your present location and construct a line through the town of Pontotoc over the old narrow gauge line what would it cost, throwing away the work that has been done?

A. Well, I have already said that to build that three miles which it would require, to come around by the old depot site, would be worth $83,000 and to throw away the work already done would be about $12,000 more.

Q. I mean that done prior to the order, the 12th day of Janaury.

A. Ninety per cent, as I said, $12,000 or more.

Q. It would be about $96,000 in round figures?

A. Very close to that.

Q. Are you familiar in a general way with the size of the old town of Pontotoc?

A. Well, it is very small.

Q. Have you examined the maps with reference to it?

A. Yes, sir.

Q. Now, Mr. Jones, would it be possible, would it be a physical possibility without closing streets and destroying val uable improvements in the old town of Pontotoc to acquire a right of way and get grounds in the old town of Pontotoc?

A. It would not be possible to do that.

Q. Under any circumstances?

A. No, sir.

Q. Now is that because of the physical condition, or the size of the old town of Pontotoc, or is it due to both?

A. Now, may be I did not answer the first question, the old depot site never was in the old town.

Q. I know, but I am asking you about the old town of Pontotoc?

A. Well, if it was not in the old town of Pontotoc you could not destroy any property in it.

Q. I am talking about going through there. If you went through there, is there any way to get depot grounds or a standard right of way through the old town of Pontotoc. I am not talking about the location of the depot, but the location of the railroad. Could you get into the old town of Pontotoc in any way?

A. Oh, no! To get into the old town you would destroy several valuable improvements.

Q. Could you get any strip of ground in the old town 200 feet wide and 2000 feet long that would be available for this purpose?

A. If you had money enough you could.

Q. You would practically destroy the town?

A. Pretty near. The town wasn't much over two thousand feet long.

Q. Did you ever hear during your encumbency as Chief Engineer for these lines any offer to give a right of way or depot grounds in the town of Pontotoc?

A. Well, indirectly.

Q. I say, in the old town?

A. Oh, no! In the old town, no, sir.

Q. Now, Mr. Jones, is there any other way, excepting by changing the main line to get into the old narrow gauge depot site, with this line of railroads?

A. Yes, sir. You can standardize that spur track and back in and out.

Q. Now, how much spur would you have to build in order to do that?

A. Well, the most economical route you could come down would be down the old narrow gauge road and that is something over 6000 feet.

Q. A mile and a quarter?

A. It is between a mile and a quarter and a mile and a half.

Q. Do you know about what that would cost?

A. I gave you my estimate of thirty thousand dollars to standardize it. You would have to make it secure and safe to operate passenger trains down there.

Q. In that you include no cost of operation.?

A. No, sir.

Q. Or maintenance?

A. No, that is the original outlay.

Q. The original outlay to construct the spur track?

A. Well, to construct the spur track and but the depot grounds. If you were going to operate a depot down there you would have to equip it in the same way as your main line. You would have to have depot grounds if you were going to do business there.

Q. How do the people from Pontotoc get from the old narrow gauge depot to the business part of the town?

A. The means of locomotion.

Q. I mean what character of way?

A. Up and down a pretty good steep hill.

Q. How far was it about?

A. Well, from the court house, I would say it was not much over a quarter of a mile.

Q. How far is the present depot from the court house?

A. It is about three quarters of a mile.

Q. Well, what would be the effect of constructing a good modern highway from the court house to the new depot site as compared with the old method of handling freight up that hill?

A. My opinion is that it would be very much better.

Q. Does the present situation materially affect the cost and inconvenience to the people over former conditions?

A. No, sir, not in my judgment.

Q. Mr. Jones, in surveying and locating this line was every thing done that the engineer could do, considering both the interests of the railroad company and the convenience of the people of Pontotoc, to locate that line as nearly in town as possible? (Object to as leading.)

A. Yes, sir.

Q. Would it in your opinion, have been possible for the old narrow gauge line to have been practically used if the narrow gauge line had been extended through the town of Pontotoc?

A. To get out you mean?

Q. Yes.

A. No, sir, it would not have been practical to operate it.

Q. Isn't it a fact, Mr. Jones, that to extend the present Gulf & Chicago Railroad Company's line through the town of Pontotoc, over the old narrow gauge line, you would in order

to get out, have to cut down a hill about two and a half miles long?

A. No, sir.

Q. You say you would not?

A. No, sir.

Q. What would you have to do in the way of cutting down a hill?

A. Well, the line between—you mean the whole scheme, clear around the three miles on the narrow gauge?

Q. I mean extending the narrow gauge through.

A. I think it is only a mile and a half long. The thing is made up of a succession of hills and valleys.

Q. I am not talking of the present line. You don't understand the question. But adopting that line and going through with your railroad.

A. Oh, well, no engineer would do that you know.

Q. I am talking about what you would have to do if you did adopt it?

A. Oh, yes, you would, but then nobody would do that.

CROSS EXAMINATION BY MR. FLOWERS.

Q. Now, Mr. Jones, when did you say you did this work?

A. I think it was in the forepart of June, 1904.

Q. 1904?

A. 1903. I know I did it in June.

Q. Are you sure about the dates?

A. 1903. I am sure about that now.

Q. How long had you been with the Mobile, Jackson & Kansas City?

A. Since May, 1901.

Q. Who employed you to do this work?

A. The Mobile, Jackson & Kansas City.

Q. Did the Gulf & Chicago Railway Company have anything to do with it?

A. Not that I know of.

Q. You were doing your work for the Mobile, Jackson & Kansas City line so as far as you know?

A. Yes, sir.

Q. Well, you say now you went up there and citizens were with you a good part of the time?

A. A great many of them were there. Not at that time, but sometime in May.

Q. At the time you did this work, making three or four different surveys, were citizens with you then?

A. No, sir.

Q. When you were there in May, what were you doing?

A. I went there to meet a delegate, with President of the road. I think that meeting was made by appointment.

Q. With the Railroad people?

A. Yes, sir.

Q. And citizens?

A. And citizens of the place.

Q. At that time were there any lines agreed upon?

A. No, sir.

Q. When you went there and made these three or four different surveys, you went solely as a civil engineer and surveyed your lines trying to find the best route through the community?

A. Yes, sir.

Q. And when you say that some citizens of the town, one Mr. Mitchell and others, suggested the route which you adopted how many other citizens were along at that time?

A. I don't think there were but four in party. There must have been fifty all told out at the preliminary line, the first survey.

Q. Was that in May or June?

A. That was in May, but I think Mr. Mitchell and Mr. Morgan, and well, I could describe the man to you, but I could not give his name, and myself.

Q. Four in all?

A. I think there was four of us and we walked two and two.

Q. Did these men first call your attention to this line which you adopted?

A. Yes.

Q. Acting upon their suggestions you surveyed it and adopted it?

A. No, sir, that was the third line tried.

Q. You tried through their suggestion?

A. Yes. Well, no, I did not try it at their suggestion.

Q. You stated in your examination in chief that this

line was suggested to you by Mr. Mitchell and others?

A. Yes, sir.

Q. But that suggestion had nothing to do with your trying that route?

A. No, sir.

Q. You would have tried it anyhow?

A. I would have tried anyhow.

Q. So anything the citizens might have said to you had nothing to do with your trying and adopting that as the most practical route?

A. Our first aim was to get into the town, close up. Our first line ran right by, in fact connected up with the old line and we kept working west. The second line was a little further west than the first line. The third line was on the present location.

Q. Well anything the citizens said to you had nothing to do with your selecting that particular line?

A. Oh, yes. Of course we considered the suggestion of any man who would be interested in the upbuilding of his town The railroad is interested in the upbuilding of the town.

Q. Did you adopt this line as the most practicable one simply because it was that, according to your own judgment, or because some of the citizens of the town suggested this line?

A. Primarily because I considered it the best line and secondarily because I considered that the citizens would accept the line.

Q. That was the best line you surveyed?

A. Yes, sir.

Q. According to your judgment it was the best one?

A. Yes, sir.

Q. So really any suggestions from citizens had nothing to do with your final determination upon that line? You would have adopted it without any suggestion, after you discovered it?

A. Yes, sir, I believe I would.

Q. Now, how far is it did you say from the intersection point north of the town, by intersection point I mean where the line adopted and the old line intersect, to the point south of the town, where the line that you say you would have to adopt if you should be compelled to go by the old site, would intersect the line which you adopted. How far is that?

A. You mean how long is that line by the way of the depot, of the old depot site.

Q. I mean how long is it by way of the route which you adopted?

A. A little over a mile and a quarter.

Q. How far is it by way of the old depot site along the most practicable route you discovered by the old depot site?

A. A little over three miles by way of the old depot site.

Q. Then according to your estimates it would compel the company to build three quarters at least of a mile more if they were compelled to go by the old depot site.?

A. Yes, sir.

Q. Then they have decided to build along the route which they adopted?

A. Yes, sir.

Q. Do you know, Mr. Jones, what it has cost to build that line between those two points, or what it will cost to build it?

A. It has cost $48,000.

Q. Does that include the right of way?

A. Yes, sir.

Q. Does it include the new depot?

A. Yes, sir.

Q. Do you know what that depot and grounds cost?

A. No, sir.

Q. Have you seen that new depot?

A. No, sir.

Q. Do you know how the Company obtained the right of way along that route between those two points?

A. I think by condemnation proceedings against Mr. Warren, and I believe they purchased the balance of it.

Q. Does that estimate of $48,000 for constructions include those expenses also?

A. Yes, sir, the $48,000.

Q. Does that estimate of $48,000 for the construction of the road between those two points embrace every item excepting the building of the depot?

A. Yes, sir, and the laying of the side tracks. It includes the grading of the side tracks, but not the laying of the side tracks, but not the laying of the side track. Only the laying of the main line.

Q. Well, in your estimate of the cost of building into

the old depot site, you said it would cost thirty thousand dollars, I believe, to build to the old depot site, and construct a depot there?

A. No, sir.

Q. What did the estimate embrace?

A. That embraced the lowering and raising of the present grade, building new and heavier bridges, the relaying of all track with seventy-pound rail; requiring additional depot grounds and everything except the building of the depot.

Q. That item is left out of both estimates?

A. Both estimates, yes, sir, and the laying of the tracks, that is left out too, but the grading of the side track is included.

Q. Now, how many owners of private property would you have to deal with to get a depot site at that place?

A. Well, I assume that there was about seven to eight.

Q. Did you make your estimate as to the value of the property belonging to each of these?

A. Partly so, and the other part was by the way juries give to the railroad companies when you condemn.

Q. Do you remember what your estimate of all that was? You spoke of one concern that would require $8,500?

A. Yes, sir, I can itemize it; $1200 for Stafford's house, I think $4500 for the electric plant and planing mill; $800 for the back end of the cotton compress, and $2,000—a thousand dollars each for some houses across the track. That makes up $8500, I think.

Q. Your estimate of $8500 embraces the several extra items of expense, which you think the company would have to go in purchasing additional grounds?

A. Yes, sir.

Q. At the old depot site?

A. Yes, sir.

Q. And it is based upon the assumption that it would locate its depot at the very same place?

A. Yes, sir.

Q. Where the old depot stood?

A. Yes, sir, that would be in the middle of the street, though.

Q. Now, Mr. Jones, did you consider in the proposition as to locating a depot at some other place along the route by the old depot site instead of right at the depot?

A. No, sir.

Q. You did not consider it?

Q. Never considered it at all.

Q. You did not try to find any other place at which it would be practicable to locate a depot?

A. No, sir.

Q. Now, after you leave the old depot site going south, how far is it along the most practicable route you could find, to where you would intersect the line which you adopted?

A. A little more than a mile and a half. It is ninety-six hundred feet, I think, almost two miles—a little more than a mile and a half.

Q. Well, what is the character of the ground over which the track would have to be built between the old depot site and where it would intersect your adopted line. I would like for you to tell us in detail if you have the information at hand, beginning at the old depot site, and going south, just what the character of the ground is over which the road would have to be constructed.

A. The first thing is a small valley that the railroad is near the bottom of—

Q. How far would you travel in that valley?

A. Oh, I couldn't give you all those details, for a mile and a half or two miles. I couldn't travel up one hill and down another.

Q. Just give your best estimate?

A. Well, I just can't give you an estimate. I can furnish you the profile and show it to you.

Q. Have you the profile?

A. Yes, sir.

Q. Can you not look at the profile and give us this information?

A. We run across a valley from the end of the spur track, 600 feet, two fifty of a cut.

Q. How deep would it be required to make that cut?

A. 22 feet.

Q. Just proceed.

A. Then a branch 40 feet wide, that is 7 feet deep; another cut two hundred and seventy five feet long, and twenty-one feet deep; then across a valley six hundred and fifty feet long

twenty-five feet deep; twenty-five feet you would have to make the embankment. Then a cut one hunrded feet long, thirteen feet deep; two washed places seven feet and ten feet deep, and you strike another cut about nine hundred and seventy-five feet long and twenty-nine feet deep, and you strike a valley nine hundred feet long and twenty-six feet deep; you then strike another valley six hundred and fifty feet long and twenty-nine feet deep; you strike another cut five hundred feet long and twenty-three feet deep; a light fill two hundred feet long, two feet deep; another cut seven hundred feet long, sixteen feet deep; another valley seven hundred long and nineteen feet deep; then a cut twenty-three hundred feet long, seventeen feet deep; a valley two hundred and fifty feet long and ten feet deep; a cut that is three hundred feet long and seven feet deep.

Q. When you say cut is twenty feet deep, you mean that that is the deepest place, do you not?

A. I have said so, yes.

Q. You have not given the average depth of the cuts nor the average heighth of a fill or an embankment?

A. No, sir.

Q. If I understand your figures correctly our estimates is that in the beginning it would cost the company thirty-five thousand dollars more to build by the old depot site than on the route which they adopted?

A. Very close to it. The difference between eighty-three thousand and forty-eight thousand.

Q. If the citizens of Pontotoc should provide a right of way and depot ground through the town of Pontotoc up to the old depot side and including the site, this difference would be reduced eighty-five hundred dollars, would it not?

A. Yes, sir.

Q. Leaving the difference between twenty-six thousand five hundred dollars. Please state whether in your estimates of fifty-three thousand dollars for constructing the road along the most practicable route, you discovered, from the depot site to the point where such line would intersect the adopted line, embraces the estimated cost of procuring a right of way?

A. Yes, sir.

Q. You made no investigation to find out what the actual cost of such a right of way would be?

A. Only in inquiring about the price of that electric light plant and planing mill.

Q. As I understand you, this electric and planing mill would have to give up some of its property for depot grounds. Is that correct?

A. Yes, sir.

Q. What is your estimate of the cost of procuring the right of way from the old depot site along to where that line would intersect the other line?

A. Two hundred dollars an acre.

Q. And how many acres?

A. Twenty.

Q. Then if the right of way should cost nothing from the old depot site to the said point south of the town of Pontotoc where the line would intersect the adopted line, then the difference in the constructions of the road between the said two points would be reduced according to your estimate to twenty two thousand five hundred dollars, would it not?

A. No, sir. That four thousand dollars is on the extended line south of Pontotoc. You would take that off of fifty-three thousand dollars.

Q. I took it off of this difference; it is the same thing; the difference in the cost of the two lines?

A. Yes, sir, that's right; I answer that question, yes.

Q. Mr. Jones, was it your understanding that the line adopted by you would be adopted by the construction company or by the Mobile, Jackson & Kansas City?

A. Yes, sir.

Q. By which?

A. By the Mobile, Jackson & Kansas City.

Q. Were these men at work at that time?

A. The builders, at the time of the location.

Q. Of this line, were they at work on some other part of the line?

A. Of the Mobile, Jackson & Kansas City?

Q. Yes.

A. Yes, sir.

Q. Do you know anything of that contract with the Mobile Jackson & Kansas City.

A. No, sir.

Q. You don't know what that contract is?

A. No, sir, I never saw it.

Q. Who passed upon your work and determined whether your lines would be adopted?

A. I don't know as anybody directly passed upon it. It was my business to make the location.

Q. Was your action final as you understood it?

A. Yes, sir, it was approved by the management. I believe they adopted it and built upon it.

Q. You had nothing to do with the construction company in making your surveys and reports?

A. No, sir.

Q. You did not know them in the business?

A. No, sir.

Q. And in every instance it is true is it not, that the line that you surveyed and adopted as the most practicable one was accepted by the company and the road was proceeded to be built upon it?

A. Yes, sir.

Q. Were you ever instructed by the railroad company for which you were working to get a line south from the old depot site, if such practicable line could be found?

A. I will say no, there was not. The Chief Engineer of a line is arbitrator. He has his instructions to make a survey from A to Z. He is skilled in certain economies in railroad construction. He knows that the railroad is going to be built. It is his duty to build that line as cheaply as possible and to get all the tonnage there is. Now, the only instructions that the party in the field gets is from the chief engineer, and I, as Chief Engineer, gave the locating engineer instructions to use the Gulf & Chicago Railroad if possible—to get out of Pontotoc, if possible, on the Gulf & Chicago Railroad. Now, those are the instructions that they got. You see each department is to itself, the executive department and the others, and the Chief Engineer has control of his department.

Q. But in case you had no locating engineer?

A. Yes, sir.

Q. I understood you did this work yourself?

A. I supervised it.

Q. You were present when it was done?

A. Yes, sir.

Q. Had you been instructed by the Mobile, Jackson & Kansas City Railroad Company, or by any officer of that company to get a practicable line out of Pontotoc from the old depot site south, if possible?

A. I was an officer of the Mobile, Jackson & Kansas City and gave the instructions myself.

Q. Please answer the question, whether you had received such instructions yourself from any office or governing board of the Mobile, Jackson & Kansas City?

A. No, sir.

Q. And in giving these instructions to your men under you, you did it because you wanted to use that line if possible —it would reduce the buliding cost of the raliroad?

A. Yes, sir.

Q. In other words, in giving such instructions to the men under you, you did not do it because your employer or your company had instructed you to have the line located south from the depot in the town of Pontotoc, but because in your own judgment you wanted to utilize that road which had already been built, in a way, to the old depot site at Pontotoc?

A. The railroad company employed me to use my judgment.

Q. The company did not point you to the old line, to the depot site nor instruct you in any way to try and get a route south from the old depot site?

A. No, sir.

Q. Did you have authority from the railroad company to accept the right of way for depot grounds from the citizens of Pontotoc for the line through that town?

A. If it had been offered to me, I could have accepted it in the name of the company.

Q. Would your action in that regard have been final?

A. Yes, sir.

Q. Could you in your capacity as Chief Engineer have bound the company to accept a right of way and depot grounds through the town of Pontotoc?

A. I believe I could—I believe it would.

Q. Does the Chief Engineer generally have such authority?

A. He is an officer of the company, and as such, I believe he would be bound to it, the company would be bound by it.

Q. The Chief Engineer is customarily clothed with such authority, in acting for his company on the one side and with the people of any municipality on the other, is he not?

A. Well, they sometimes give him the authority; sometimes it is delegated to a right of way agent, and sometimes it is in the office of the general Counsel.

Q. Mr. Jones, I believe you say a civil engineer is an officer of the corporation, is he not?

A. The Chief Engineer is an officer of the corporation.

Q. Did you ever have your attention called to the fact before you went there to do this surveying, that the Mississippi Railroad Commission, when it was asked to ratify the consolidation of the Gulf & Chicago Railroad Company and other corporations into the Gulf & Chicago R. R. Co., stipulated that if the consolidation should be ratified then the old narrow gauge line from Middleton, Tennessee, to Pontotoc, Mississippi, would be broadened and standardized and made a part of their line?

A. No, sir.

Q. You never took that fact into consideratioon in locating this line through that community?

A. No, sir.

Q. No officer of the corporation and no one representing the corporation ever called your attention to that fact?

A. No, sir.

Q. When did you first hear of that?

A. When you just now told me.

Q. You never heard of it before this examination?

A. No, sir.

Q. Please state whether anybody besides yourself representing the company had anything to do with locating this line through the town of Pontotoc.

A. If they did, I did not know it.

Q. You acted under full instructions and no one representing the company took part with you in this locating the line through the town of Pontotoc?

A. No, sir.

Q. Mr. Jones, did any officer of the company, or any one representing the company before you went to Pontotoc to do this surveying, call your attention to the fact that when that narrow gauge road was built into the town of Pontotoc to the

old depot site, it was understood between the company building the line and the citizens of Pontotoc that a right of way and depot grounds were to be donated with the understanding that the depot should be built where it was built and that certain citizens of the town of Pontotoc paid said railroad company five thousand dollars in cash, in consideration of the company locating the depot at the old site?

A. I heard the statement contradicted by one of the people that subscribed to the fund.

Q. Did your company or any one representing your company, call your attention to that fact, or instruct you or suggest to you, that you take that fact into consideration in locating this line through the town of Pontotoc?

A. No, sir.

Q. You never heard any suggestions of it from your company or from any one representing your Company?

A. No, sir.

Q. Then if I understand you correctly you went to the town of Pontotoc to locate that line just as if no line had ever been built?

A. No, sir.

Q. Did you, in locating the line, which you at last adopted, from the point north of the town of Pontotoc where it leaves the old line, take into consideration at all, that the line had at once been located, down to the old depot site?

A. Oh, yes, sir.

Q. Did that influence you in the location of your line from there south?

A. When I first went there I wanted to follow the entire line—to use the whole thing. Of course, it had its influence; I wanted to adopt the line down by the old depot site, if possible.

Q. But you located the line at last at the very place where you would have located it, if that mile and a quarter or mile and a half which was abandoned had never been constructed did you not?

A. That was the result of it, yes.

Q. Then in locating your line from that point south, you were uninfluenced by anything that had taken place before that, so far as the result is concerned?

A. Absolutely uninfluenced either by the company or by the citizens.

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Q. Did you ever at any time offer or suggest to any of the citizens of the town of Pontotoc that you would run that line through the old town at any place, provided a right of way would be furnished?

A. No, sir.

Q. Did the citizens of the town of Pontotoc have any occasion at any time while you were doing this work, to make a tender of any grounds which seemed to be practicable on which to build the road through the town of Pontotoc. By practicable I mean which seemed to you to be a practicable route?

A. They had plenty of opportunity. I was there about a week.

Q. I mean, did you discover any practicable route which you would have adopted if they had made a tender of the grounds, on which to build a road and depot?

A. They would first have to discover the grounds.

Q. You did not discover any such grounds?

A. No, sir, except as finally located.

Q. Then you did not fail to run the line through the old town of Pontotoc because of any failure upon the part of the citizens or municipality itself, to tender such grounds?

A. No, sir.

Q. You did not suggest to the citizens of Pontotoc any practicable route through the town, provided such grounds would be donated?

A. No, sir.

REDIRECT EXAMINATION.

Q. You were asked if you tried to find a way to the old narrow gauge line. Did you inspect the narrow gauge line with the view of trying to utilize it?

A. Yes, sir.

Q. Did you discuss the propriety of using it or not, with the citizens of Pontotoc?

A. No. Sir.

Q. Did you at anytime during the summer of 1903, after the location of the line, hear any protest from the people of Pontotoc about the adoption of it?

A. No, sir.

Q. How long did you remain as Chief Engineer of the Mobile,

Jackson & Kansas City and the Gulf & Chicago Railroad company after the adoption of the line?

pany after the adoption of the line?

A. About three months, I guess.

Q. Is it not a fact that you never heard of any objections to the located line until the Commission made some order about building the depot at the old site?

A. That is the first I ever heard of it.

Q. And as a matter of fact did not that relate to dapot facilities of the narrow gauge line rather than have any particular reference to the location of a new line?

A. Well, I only heard that as gossip. I could not say —I heard it talked about,

Q. Well, as I understand you, you went to Pontotoc with a view of locating this line for the purpose of constructing and operating through the town of Pontotoc, a standard gauge railroad, and you also had in view the use of the narrow gauge line as a part of the main line of the proposed standard railroad?

A. Yes, sir.

Q. That is a fact, isn't it?

A. Yes, sir.

Q. And that you undertook to use the narrow gauge line as a part of the mail line of the proposed standard gauge nine, both with a view of economy for your company, and having in view the convenience of the people of the town of Pontotoc?

A. Yes, sir.

It is agreed between the solicitors for the complainant and the defendants, respectively, in the above stated cause, that the bill filed on behalf of the State of Mississippi, by the Railroad Commission against the Mobile, Jackson & Kansas City Railroad Company, et al., in the Chancery Court of Pontotoc County, and removed to the Federal Court, may be read as evidence on the hearing of this cause.

BRIEF AND ARGUMENT FOR COMPLAINANT.

Mobile, Jackson & Kansas City Railroad Company

vs.

Mississippi Railroad Commission.

In the above stated cause the following facts are beyond dispute, being alleged in the bill and admitted by the answer:

FIRST. Complainant is engaged in interstate commerce in the carriage of mails, freight and passengers between the states of Alabama, Mississippi and Tennessee.

SECOND. Complainant is engaged in the work of completing a continuous line of standard gauge railroad from the City of Mobile, Alabama, to Jackson, Tennessee.

THIRD. That the Gulf & Chicago Railway companies of Mississippi, it being stated in the application for consolidation that the narrow gauge line of road owned by the Gulf & Chicago Railroad Company was to be broadened and standardized and used as part of the line of the consolidated company between Decatur, Mississippi, and Jackson, Tennessee.

FOURTH. That the work of completing said line of railroad is now actively progressing, and the work of broadening and standardizing the narrow gauge line is also in progress, the said work being practically complete between Pontotoc and New Albany, Mississippi.

FIFTH. That the line of said railroad has been surveyed, adopted and graded through the corporate limits of the town of Pontotoc and depot grounds within said corporate limits and on the line of said railroad selected, condemned and prepared for use. That the selection of the line and the depot grounds was made after full and repeated conferences with the people of the town of Pontotoc, a majorityof whom acquiesced in said selection.

SIXTH. That on the 12th day of January, 1904, and subsequent to the adoption, location and grading of said line through the town of Pontotoc and the condemnation and preparation of a depot site on the line of said railroad,

in the corporate limits of said town, the Railroad Commission of Mississippi ordered complainant to build a depot on the old narrow gauge site, a distance of one-half a mile from the proposed main line of said road.

The following facts are alleged in the bill, positively supported by affidavits submitted by complainant, and nowhere seriously controverted by defendants:

FIRST. That the depot site named in the order of the Commission can only be utilized by complainant railroad company, either by abandoning its present graded line and its depot site already prepared for use, and deflecting its line into the depot site named by the Commission, increasing the length of its line nearly a mile and at an increased cost to complainant of about Forty-nine Thousand ($49,000.00) Dollars; or by the construction of a spur track at a cost of between Fifty Thousand and Sixty Thousand ($50,000 and $60,000) Dollars additional,the cost of operating which would be equal if not in excess of the net receipts from all business done by complainant at Pontotoc.

SECOND. The order of the Commission names a particular lot of land upon which the depot must be erected. At this place the railroad company neither owns sufficient land for the purpose, nor can it acquire it without an unreasonably large outlay.

The Court has Jurisdiction.

The allegations of the bill make a case arising under the Constitution of the United States. It is positively charged that the order of the Railroad Commission is in violation of the Commerce Clause of the Constitution (Art. I., Sec. 8). This gives the Court jurisdiction to hear the case upon the merits.

C. S. R. R. Co. v. C. R. R. Co., 56 Fed. Rep., 747;
I. C. R. R. Co. v. Adams, 180 U. S., 36.

The Supreme Court of the United States, in the case of City Railroad Co. vs. Citizens Street Railway Co., 166 U. S., 562, in determining the question of jurisdiction uses these words: "It should be borne in mind in this connection that jurisdiction depended upon the allegations of the bill, and not upon the facts

as they subsequently turned out to be." And, again, at page 563, these words: "All that is necessary to establish the jurisdiction of the court is to show that the complainant had, or claimed in good faith to have, a contract with the city, which the latter had attempted to impair." This clear statement of the rule in view of the positive allegations of the bill, and the admission of the answer, undoubtedly imposes upon the Court the duty of hearing the case on its merits. As was said by the Court in the case last cited above, whatever the facts may be subsequently turn out to be, the bill contains jurisdictional allegations, all of which are substantially admitted by the answer.

Let us inquire what will be the effect of an enforcement of the order made by the Commission.

In the outset we frankly concede to the State the right to impose any just and reasonable regulation upon the railroad company which may be for the protection of life or property, and this may be done though it incidentally affect interstate commerce.

But we earnestly insist that after an interstate carrier has complied with every state regulation, statutory and constitutional, that any order made by the Commission which will "directly burden or impede the interstate traffic of the Company, or impair the usefulness of its facilities for such traffic" (163 U. S., 154) is unreasonable, arbitrary and void. The only authority of the Railroad Commission of the State to regulate the location of depots or to name the particular site thereof, is found in Section 4309 of the Code of Mississippi:

> "The Commission may designate the site or location of any new building or station house, which may be ordered erected in cases where the site selected by the railroad officials is inconvenient or inaccessible; but every depot must be located with due regard to the interest of the railroad and the public convenience."

This authority was (first conferred upon the Commission in 1888, (Laws of Mississippi, p. 44) and contained this provision: "Provided that said depot shall be located on the line of such railroad, and having in view the interest of the public and the railroad company." It is clear from a reading of the statute in question, that the Commission has, in the first instance, no

authority to locate depots, but can only exercise its authority after it is determined that the site selected by the railroad company is inaccessible and inconvenient; and in determining the question of inconvenience, the interest of the company as well as the convienience of the people must be considered, and in any event, the "depot shall be located on the line of the railroad." It is admitted that the depot site named by the Commission one-half mile from the proposed line of the Company required to use it. The effect of the order, therefore, is to require complainant to change its line already graded and adopted, or to build a spur track into the depot site.

The Commission has no power to direct the location of a line of railroad. On the contrary, the legislature of the State of Mississippi has vested railroad companies with the discretion in this regard and authorizes them to make necessary or reasonable changes even after construction has commenced.

(Code of Mississippi, Section 3599.)

The order therefore violates the positive requirement of the original act in locating the depot off the line, and takes from the company the discretion with which the statute invests it, viz.: the right to locate its line and to make necessary changes therein. The Supreme Court of the United States, in the case of Cleveland Railway Co. vs. Ill., 177, U. S., 522, uses this language: "After all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable and an infringement upon that provision of the constitution which we have held requires that commerce between the states shall be free and unobstructed." What local condition has complainant failed to meet? Its line is being constructed in a northerly direction from Decatur, Mississippi, to Jackson, Tennessee, as authorized by its charter; it has prepared its line through the corporate limits of the town of Pontotoc; has established and will maintain a depot therein on its line as required by Section 187 of the Constitution. Having done this, it has complied with every legal requirement and is free to adopt such course in the construction and operation of its property as will be most economical and profitable. The bill alleges with certainty and the proof shows without dispute, that to change the line into the

old depot site, would impose upon complainant an original outlay of $49,000 with fixed interest charges of five per cent. per annum, and increase the length of its line very nearly a mile, thus causing each train through the town of Pontotoc to travel this increased distance at a cost of not less than one dollar per mile per train. If the spur track is constructed and operated it will be at an original outlay of between $50,000 and $60,000 with the same fixed charges, and the additional mileage of from one and a quarter to one and a half additional mileage, with the additional burden that each train passing through the town of Pontotoc would have to back into and out of the depot over this track, thus making the additional train mileage for each train, from two and a half to three miles. Complainant under the statutes of the state, would have to back its trains into the depot at a rate of speed not exceeding three miles per hour and be preceded by a servant of the company. (Code of Mississippi, Sec. 3549.)

Operating ten trains per day over the main line into the old depot site, in addition to fixed charges would cost in additional train service, more than three thousand dollars per year. Operating the spur track would cost additional train service about $9,500 per year. If the order of the Commission is obeyed, one of these unusual burdens must fall upon complainant. Each one of its trains operated between Mobile, Alabama, and Jackson, Tennessee, passing through the town of Pontotoc, would be subjected to one of these burdens.

Every passenger and every pound of freight carried between these interstate points would have the length of the journey increased from one to three miles, and the time of carriage extended from one half to three hours. These burdens are not the incidents of the enforcement of some valid local law, because they have all been complied with but are arbitrary, unreasonable and void.

The Supreme Court of Mississippi, in the case of Currie vs. M. J. & K. C. R. R. Co., 61 Miss., speaking of the right of railroad companies to locate depots, uses this positive language: "The railroad authorities have unlimited power to fix them for the best interest of the enterprise, even though a money consideration be received therefor."

The effort on the part of defendants to show a contract for

the location of the depot on the old site, is not supported by any competent evidence, and if it was the contract would be void as contrary to public policy. We quote from the case of the F. C. & P. R. R. Co. vs. State, 13 Sou. Rep., 106: "The location of railroad depots has much to do with the accommodation of the wants of the public; and when once estabilshed, a change of affairs may require a change of location, in order to suit the public convenience. We cannot admit that an individual is entitled to call for the interference of a court of equity to compel a railroad company to locate unchangeably its depot at a particular spot to subserve the private advantages of such individual. Railroad companies, in order to fulfill one of the ends of their creation, the promotion of the public welfare, should be left free to establish and re-establish their depots wheresoever the accommodation of the wants of the public may require. To grant the relief asked for by the complainant, we would regard as against public policy."

Examination will disclose that the authority quoted has the support of the leading text writers and courts of the country. It has been also expressly decided by the Supreme Court of Mississippi, that the change of location of a station house from one place to another, in the same town, is not offensive to any existing statute of the state.

We respectfully submit that the jurisdiction of the Court is clear; that the bill should be retained and the restraining order made permanent.

McIntosh & Rich,
J. W. T. Falkner,
Solicitors for Complainant.

IN THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, IN EQUITY.

Mobile, Jackson & Kansas City Railroad Company
vs.
Mississippi Railroad Commission.

BRIEF FOR DEFENDANTS.

The argument here submitted is addressed solely to the question as to whether the enforcement of the order of the Rail-

road Commission, complained of, would be an interference with interstate commerce.

We do not wish to be understood, however, as yielding any other question involved in this proceedings, or as abandoning any defense upon the facts.

The order of the Railroad Commission was directed to the Gulf & Chicago Railroad Company and required it to build a depot at the end of its line at Pontotoc, Mississippi. This line is now in operation and has been for about sixteen years. It is admitted that there is no depot in said town of Pontotoc sufficient for the accommodation of the freight and passenger traffic carried on by the narrow gauge line from Pontotoc, Mississippi, to Middleton, Tennessee.

The complainant comes in and resists the order claiming that it has leased the said line from the Gulf & Chicago Railway Company and that it will have no use for this depot when its prospective road is built along through the western part of the said town of Pontotoc.

How can the enforcement of the order of the Railroad Commission to build this depot affect any interstate commerce carried on by this complainant.

The line is now operated from Pontotoc to Middleton, as above stated. The railroad people and its patrons need a station house for the convenient handling of the freight and passenger traffic conducted over said line. This business, in fact, can hardly be carried on without a depot. It clearly appears that no sufficient accommodations are now offered by the said company at said point.

Complainant does not pretend to say that a narrow gauge box car may be converted into a respectable passenger depot. It is undeniable that if the narrow gauge between Pontotoc and Middleton is to continue to be operated a new depot is needed at said point and that the commission in enforcing its order would be promoting interstate commerce and not interfering with it.

If the above statement is true, then it follows inevitably that this cause must be dismissed for want of jurisdiction. And this conclusion cannot be met by any showing that at an early date the lessees of the narrow gauge line will be operating an interstate line passing north and south at a point one-half to three

quarters of a mile west of the old depot site, and that when this new line is completed and is in operation, no depot will then be needed at the old site, but the depot for Pontotoc will be on the new line one-half or three-quarters farther west. This is only saying in another way that it is unreasonable and unjust to require the building of a depot to be used only a few weeks or months. But with this alleged unreasonableness this Court is not concerned. The execution of the order of the Commission would promote commerce between Mississippi and Tennessee while this narrow gauge line is being operated and it is with this proposition that this Court is called upon to deal.

The determination of this question cannot be influenced by any showing as to the impracticability of extending a railroad south of the town of Pontotoc from the old depot site; that there are hills south of the said town which would have to be cut through at great expense; that work has already been done on the proposed new road along a route surveyed and marked, passing through the western part of the corporate limits of Pontotoc from the old site. Evidence as to such condition throws no light upon the inquiry as whether the building of the depot would interfere with interstate commerce.

This court is not here called upon to decide whether the complainant has the right to abandon any part of the narrow gauge line in such a way as to render a depot at the old site unnecessary. This court is not called upon to decide whether the complainant can be forced to operate a spur track from the new line marked out by it to the old depot site in Pontotoc, nor whether the said company can be forced to run its line south out of Pontotoc from the old depot site. These questions are not involved in this proceedings. The only argument which can be made by the complainant in support of its position is that the building of a new depot at the old site would force it to maintain such on its line after its new line shall have been completed. and put into operation. The commerce claimed to be interfered with is something not yet obtained to be transported over a road which is to be built in the future. But the people of Pontotoc need a depot and they need it now for the purpose of the traffic now in actual existence. They may not need this depot very long, and in fact will not need it a great many months if the plans of the complainant company are carried out, and it

is permitted by the authorities to build its line along the surveyed route and abandon that part of the narrow gauge line between the new line and the old depot site. It may be that the time such depot will be used will be too short to justify the expenditure of the money necessary to build a new depot. But this consideration, as above stated, goes only to the reasonableness of the requirement.

The question here involved is not to what extent a regulation may affect or interfere with interstate commerce, because the enforcement of this order would not interfere with interstate commerce in any degree nor to any extent. I have been unable to find any case parallel with the one at bar, but the attention of the court is asked to the discussion of general principles in Hopkins v. The State, 171 U. S., 578. In that case the Court said inter alia, "Definitions as to what constitutes interstate commerce are not easily given so that they shall define the full meaning of the term. It comprehends, as it is said, intercourse for the purpose of trade in any and all its forms, including transportation, purchase, sale and exchange of commodities between the citizens of different states and the power to regulate it embraces all the instruments by which such commerce may be conducted." And again, "But in all the cases which have come to this court there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transaction of such commerce." And, again, "But whether the charges are or are not exorbitant is a question primarily of local law, at least in the absence of any superior or paramount law providing a reasonable charge."

The questions raised by the complainant in this cause are questions for the state courts of equity to determine and in these courts the complainant may have a patient and fair hearing.

Respectfully submitted,

J. N. FLOWERS,

Assistant Attorney General,

Solicitor for Defendant.

MOTION TO REMAND.

THE UNITED STATES OF AMERICA,

Eastern Division, Northern District.

IN THE CIRCUIT COURT, IN EQUITY.

The State of Mississippi, et al.,

vs.

The Mobile, Jackson & Kansas City Railroad Company, et al., Defendants.

Complainants by solicitors move the court to remand this cause to the Chancery Court of Pontotoc County, Mississippi, from which it has been removed to the Circuit Court of the United States, and for reasons thereof assign the following:

FIRST. The said circuit court of the United States has no jurisdiction of either the subject matter in controversy or the parties.

SECOND. Because the said bill as filed in the chancery court of the said county, and the issue raised thereby present no federal question for the adjudication of this court.

THIRD. Because all the issues and questions raised in said litigation can all properly be settled in the courts of the State of Mississippi.

FOURTH. Because the said cause was improperly removed.

FIFTH. For other good and sufficient reasons to be stated on hearing of this motion. Wherefore, complainants ask that this cause be remanded to the said chancery court of Pontotoc County, and that defendants be taxed with all costs accrued by reason of the said improper removal of the said cause.

WILLIAM WILLIAMS,
Att'y. Gen'l. of Mississippi,
R. V. FLETCHER,
GEO. T. MITCHELL,
Solicitors for Motion.

Filed October 1st, 1904.

L. E. OLDHAM, Clerk.

Certified Copy of Order of Removal to Pontotoc County.

The Mississippi Railroad Commission, et al.,

No. 145. vs.

The Mobile, Jackson & Kansas City Railroad Company.

Equity.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, at Aberdeen, in said District:

Be it remembered that this day (being the 4th day of April, A. D., 1905), came on to be heard the motion made by the complainants to remand this cause to the chancery court of Pontotoc County, and the court having heard the same, and argument of counsel, doth order that the said motion be and the same is hereby sustained, and the said cause is remanded to the chancery court of Pontotoc county;

It is further ordered that the said defendants pay the costs incident to the removal of the said cause to this court and execution may issue for same against them and the sureties on their removal bond.

Ordered and adjudged and decreed the 4th day of April, A. D., 1905.

H. C. Niles, Judge.

United States of America,
Northern District of Mississippi.

I, L. E. Oldham, Clerk of the Circuit Court of the United States for the Northern District of Mississippi, do hereby certify that the above and foregoing is a true and full copy of an order as appears of record in my office at Aberdeen, Mississippi, in minutes of proceedings of the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, dated April 4th, and to be found of record in proceedings of said Court in Minute Book 4, page 550, being a part of proceedings of said Circuit Court of the United States during April term, A. D., 1905.

L. E. Oldham, Clerk.
By B. C. Sims, D. C.

Filed April 21st, 1905.

W. T. Furr, Clerk.

[Copy] Mobile, Ala., Feb. 6, 1904.

Messrs. S. A. Witherspoon and Thos. Keith,

Attorneys for G. M. Gallaspy and citizens of Decatur.

Gentlemen:—In compromise and settlement of the pending suit of G. M. Gallaspy vs. Gulf & Chicago Railway Company, and the Mobile, Jackson & Kansas City Railroad Company, seeking to compel the defendants to locate and construct their line of railroad through the town of Decatur, in compliance with section 187 of the Constitution of Mississippi, we have to say that the Mobile, Jackson & Kansas City Railroad Company proposes in compromise and settlement of the suit against it, as aforesaid, the following:

1. When the rails are laid on the grades now established west of and opposite to Decatur, the county seat of Newton county, and when train are run thereon, it will immediately build a line of track into the town of Decatur over a right of way selected by it, which right of way shall be provided and paid for by the citizens of Decatur within the corporate limits, and also without the corporate limits to the amount of $250.00, if said right of way from the main line to the corporate limits shall cost as much as said sum, and will also establish a depot in the town of Detacur, at some convenient point to be selected by it, the grounds on which said depot to be established to be provided and paid for by the people of Decatur; said track and depot to be operated and maintained and trains run thereon as provided by law, the same as if depot were on the main line. Upon the completion of said track and depot, as above proposed, said suits to be dismissed, and in case said track and depot are not operated and maintained as above agreed, then judgment by consent shall be entered in said suits to enforce this agreement.

SIGNED: McIntosh & Rich,

Attorneys for Gulf & Chicago Railway Co.

We accept the foregoing proposition, as a compromise and settlement of said suits.

SIGNED: Thomas Keith,

S. A. Witherspoon,

Attorneys of G. M. Gallaspy and Citizens of Decatur.

Filed, April 20th, 1905.

W. T. Furr, Clerk.

Affidavit of Jeff Wilson.

STATE OF MISSISSIPPI, Pontotoc County.

In the Circuit Court for the Southern District of the State of Mississippi, In Equity.

Mobile, Jackson & Kansas City Railroad Company

VS.

Railaroad Commissioners of the State of Mississippi.

AFFIDAVIT OF JEFF WILSON.

This day personally appeared before me, R. S. Stanton, a Notary Public of the town of Pontotoc, county of Pontotoc, and State of Mississippi, Jeff Wilson, personally known to me, who being by me first duly sworn, makes oath as follows: Affiant says he is a member of the firm of Salmon & Wilson, and that said firm is engaged in a general mercantile business in the town of Pontotoc, selling both at retail and wholesale; said firm has about $30,000 invested in their business in said town, and own the buildings in which they carry on said business, and said buildings are worth about $5,000.00. Said firm also owns other real estate in said town of the value of $3,000.00. Affiant state that it would greatly injure the business men of the said town to put the depot where it is proposed to put same. That it would greatly increase, perhaps double, the cost of drayage to the business men of the said town; affiant further states that the inevitable result of placing the depot on the proposed site selected by complainant would be to depreciate the value of all the property now occupied by the business men of he said town. Affiant asserts that his firm and other business men of the town have invested their money in the said property on the faith of the assurance that the depot would be permanently located in its present or old site, and he believes that it would be ruinous to said property owners to make the change desired by the railroad company. That the said proposed new site is inconvenient and inaccessible, and would entail a great and unnecessary burden upon both the shipping and travelling public. The roads leading

from the proposed depot to the business part of the said town are bad and at certain seasons of the year practically impassable.

Affiant states that the old depot site is convenient, and has always been satisfactory to the public. Affiant would further state that he believes that the present depot grounds are ample in size to accommodate the needs of the railroad company.

JEFF WILSON.

Swor to and subscribed before me this 28th day of April, 1904.

R. S. STATEN, Notary Public.

Filed the 3rd day of November, 1904.

Affidavit of R. P. Brown.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

Circuit Court, in Equity.

Mobile, Jackson and Kansas City Railroad Company

vs.

Mississippi Railroad Commission.

AFFIDAVIT OF R. P. BROWN.

This day personally appeared before me, R. S. Staten, a Notary Public of the town of Pontotoc, County of Pontotoc, State of Mississippi, R. P. Brown, personally known to me, who having been by me first duly sworn, makes oath as follows:

That he is a resident of the town of Pontotoc, said county and state; that he has lived in the said town for over thirty years; that he was living in said town at the time of the construction of the narrow gauge railroad to said town, that he has carefully read the answer filed by the respondents in the above styled cause, and that he was one of the committee of the citizens of the said town of Pontotoc, who made the written agreement with the owners and managers of the corporation which constructed the said

narrow gauge railroad to said town. That he knows that the written agreement was entered into substantially as set forth in the said answer, and that the said written agreement provided that upon the grants of rights of way and depot and switching grounds to the said railroad, and the further payment of the sum of $5,500 in cash, that the said company would locate its line and locate its depot on certain grounds and along a certain route to be selected by the said officials of the said railroad company; that the said rights of way were granted and the said amount paid to the railroad company, and that the line was then located and the depot located by the said railroad company as provided for in the said agreement.

Affiant further states that the said written agreement was deposited with one of the three members of the committee, to-wit: O. C. Carr, J. W. Bell, or affiant; affiant cannot say with certainty which one; affiant has, however, made diligent search through all his papers, in his safe, and elsewhere for said papers, and has searched carefully through all the places where such papers are usually kept, and same cannot be found; affiant states that he believes said paper has been lost; affiant states further that he is a property owner of the town of Pontotoc, and that in his judgment the location of the depot of complainant at the place selected by complainant would vastly depreciate the value of affiant's property in said town, as well as the property of all others who have invested their money in property in the present business portion of the town, and that the road or roads leading from the proposed depot to the court house could not be put in a condition of good repair without the expenditure of a large sum of money by the town. Affiant further states that the present depot location is convenient to the business section of the town, and that complainant already owns ample grounds for depot purposes at that place, and that if complainant should desire other and ampler ground, they could be obtained for that purpose. That immediately west of the said old depot grounds and adjacent thereto, there is a level tract of land now temporarily occupied which would be available for depot and switching purposes and that no reason exists so far as affiant can ascertain why the said depot should be rebuilt on the present location; affiant states that when the depot was located on the present site by the said owners and managers of the narrow gauge railroad, that the

said railroad company expected and contemplated the construction of their line southward from the present depot site, and that a route has been surveyed and located southward from the present depot site and that same was convenient and practicable.

And further affiant sayeth not.

R. P. BROWN.

Sworn to and subscribed before me this 28th day of April, 1904.

R. S. STATEN, Notary Public.

Filed the 3rd day of November, 1904.

Affidavit of J. E. Walker.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

CIRCUIT COURT, IN EQUITY.

Mobile, Jackson & Kansas City Railroad Company

vs.

Railroad Commissioners of Mississippi.

This day personally appeared before me, R. S. Staten, a Notary Public in and for the town of Pontotoc, county of Pontotoc, and State of Mississippi, J. E. Walker, personally known to me, who being by me first duly sworn makes oath as follows:

That he is a resident of the town of Pontotoc; that he is a merchant of said town and also a dealer in cottonseed and interested in real estate; that he owns five brick stores in said town, one frame business house and real estate in a considerable quantity used for residence purposes, comprisesing nine dwelling houses, and that he values all his real estate holdings at $35,000; affiant would state that he verily believes that the value of this property would be depreciated fully twenty-five per cent. by the removal of the depot to the place desired by complainant, and that such removal would entail upon affiant alone a loss of $8,750 in the depreciation of his real estate, besides loss to his mercantile business; that the cost of drayage to the merchants of Pontotoc would be doubled if the depot is moved; that affiant has con-

structed his houses and made large purchases of real estate upon the theory and in the belief that the depot would not and could not be moved, and that its removal would greatly damage him a aforesaid; affiant would further show that he is a buyer of cotton seed in large quantities, and that he has erected near the present depot site cottonseed houses for storage of his seed at considerable expense to him, and that if the depot is moved, affiant will lose all he has expended in the erection of cottonseed houses; affiant would further say that there has been erected near said depot a cotton platform which is the property of one C. P. DeJournette, and from the rent of which he derives a considerable revenue, amount probably to $500.00 a year which will be rendered valueless in case the said depot is moved. That there is in close proximity to said depot a valuable cotton gin, the property of the Mississippi Cotton Products Company, which will be greatly impaired in value if the said depot is removed; that Kennedy Brothers have established and now have in operation a factory for the manufacture of sawed staves, and located on a lot adjacent to the said old depot, which will be greatly impaired in value if the said depot is removed; these several industries and enterprises were all located at their present site because it is necessary for the successful conduct of their business that they should be near the depot. Affiant says further that the cost of grading a road from the business portion of the town to the new depot site would be about, if not quite, $10,000, and that even then the distance of the depot from the town would be such that business would be interfered with, and passengers greatly inconvenienced; affiant states that the town of Pontotoc is now engaged in active competition with the towns of New Albany, Tupelo and Oxford, for the business of the adjacent section of the county, and that if the depot is established where complainant wishes to put it, the cost of goods to merchants will be enhanced by reason of additional drayage charges, and the merchants of the town of Pontotoc will not be able to compete with the merchants of the above mentioned rival towns; affiant would state that if the depot is removed as contemplated, the said expense of $10,000, would have to be met by an issue of the bonds of the town, as there is now no money in the municipal treasury. This would entail upon the said town a fixed interest charge of not less than $600, which would have to be met by an increase in taxation; that the assessed value of all the property

in the town of Pontotoc is only a small amount in excess of $300,000.00, and that it would require an annual levy of two mills of taxes to meet said fixed interest charge, which would make the municipal rate eight and a half mills, to say nothing of the money required to accumulate a sinking fund for the ultimate liquidation of the bonded indebtedness.

Affiant would further state that the inevitable result of moving the depot would be to establish a rival town on the hill three quarters of a mile west of the present town of Pontotoc, and thereby injure and impair the value of all the property in the present business portion of the town; affiant would further state that the present depot facilities of the said town are entirely insufficient, and that at present freight is often scattered about on the ground near the small freight room now in use, and the town of Pontotoc has been without any proper depot facilities since the night of the 14th of February, 1903.

And further affiant sayeth not.

J. E. WALKER.

Sworn to and subscribed before me this 28th day, April, 1904.

R. S. STATEN, Notary Public.

Filed the 3rd day of November, 1904.

Affidavit of O. C. Carr.

STATE OF MISSISSIPPI, Pontotoc County.

This day personally appeared before me, R. S. Staten, a Notary Public, etc., as aforesaid, O. C. Carr, who being first duly sworn, makes oath as follows:

That about the year 1886, construction of the Gulf & Chicago Railroad was commenced, and W. C. Falkner, President, and promoter thereof, contracted with J. W. Bell and others, affiant being one of the number, to bring said road to Pontotoc and to locate the depot either in the hollow west or in the hollow east of said town of Pontotoc, and the two places alluded to were within the corporate limits of the said town, and were not more than five or six hundred yards from the pubic square, where the entire business of the said town was being transacted, and the said W. C. Falkner, President aforesaid, did within the year

1886 locate the depot in the western hollow of said town and said depot was maintained, used as such until it was burned in the spring of 1902, and the said citizens, J. W. Bell, O. C. Carr, Brown, Clark, W. W. Bell, R. W. Flournoy, A. J. Brown, and many others, in pursuance of the aforesaid agreement, paid in cash to W. C. Falkner, President, as aforesaid, the sum of $5,500.00, and gave in addition thereto, ample grounds for depot purposes, the consideration being that the depot should be located and maintained at the point where the same was burned, the most suitable point as determined by the railroad officials for the construction of said depot was in Coffee Street, between lots 21 and 40, and within and a part of the incorporation of the town of Pontotoc, and the greater part of the said depot building was in the said Coffee Street, this being authorized and permitted by the legally constituted authorities of the said town; a small portion of the south end of the said depot building may have extended into lot 40 but most certainly only a few feet of it; that said track of said railroad ran south 42½ degrees east, and it is 629½ feet from said depot to where it strikes the margin on the western boundary of said old town of Pontotoc and continued 22 feet in a diagonal direction into said margin. It will be seen from diagram filed in this case that the margin referred to is a space on the western boundary of the old town of Pontotoc and 60 feet wide, and is a part of the said original plan. That affiant contributed $500.00 to the fund to have the old depot established upon the site it was located on. If the grounds are not sufficient at the old site for the depot and conveniences of the new railroad and the citizens are required to furnish more ground, affiant is confident that same can be done. That there existed a feasible exit southward from the old depot has never been questioned until the promoters of the M., J. & K. C. R. R. raised the point and in the opinion of affiant, there can be a more practicable and less expensive route south of the old depot secured than the one adopted by the said M. J. & K. C. R. R. Co.

And further affiant sayeth not.

O. C. Carr.

Sworn to and subscribed before me this 1st day of April, 1905.

R. S. Staten, Notary Public.

Affiant further desires to state that the point where the

M. J. & K. C. Railroad leaves the track of the G. & C. Railroad is not within the present extended corporation limits of the town of Pontotoc.

O. C. CARR.

Sworn to and subscribed this 12th day of April, A. D., 1905.

R. S. STATEN, Notary Public.

Affidavit of O. C. Carr.

STATE OF MISSISSIPPI,
Pontotoc County,
United States of America.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN EQUITY.

Mobile, Jackson & Kansas City Railroad Company

vs.

Railroad Commissioners of Mississippi.

AFFIDAVIT OF O. C. CARR.

This day personally appeared before me, R. S. Staten, a Notary Public in and for the said county and state, O. C. Carr, personally known to me, who being by me first duly sworn, makes oath as follows: That he is a resident citizen of the county of Pontotoc, State of Mississippi, and that he resides in the town of Pontotoc, and has resided in said town for more than forty years; that he is a property owner in said town, and familiar with the situation of the old depot site; that about the year 1866 or 1867, when the present narrow gauge line of railroad was built, or about to be built to the town of Pontotoc, by a corporation designated as the Ripley Railroad Company, or it was sometimes known as the Gulf & Ship Island Railroad Company (northern division), a corporation owned, managed and controlled by the persons who afterwards organized the Gulf & Chicago Railroad Company, there was much discussion in regard to the location of a depot in the town of Pontotoc; the said railroad company, at said time, or shortly before the permanent location of their said depot, was considering a plan to construct their main line of

railroad somewhat westward of the town of Pontotoc; this was very unacceptable to the citizens and business men of the town, and steps were taken to prevail on the owners and managers of the said railroad company to locate their line and depot in some place and along some line which would be satisfactory to the said citizens and business men.

Negotiations were begun with the managers of the said railroad, and the said managers stated to a committee of the citizens of the said town that they would regard the wishes of the said business men and citizens, if the town would donate to them the right of way through the said town and would further donate sufficient land for all necessary depot grounds and switches etc., and would pay the estimated additional cost to the railroad company of running their line through the said town which was placed at $5500.00. The said railroad company promised and agreed to construct their lines of railway through the said town upon one of two designated spots, upon the performance by the said citizens of these said condtions. After confercene and consultation, the said terms were accepted, and by popular subscription, the said sum of $5500 was raised. Thereupon a written contract was drawnup and signed by the said interested citizens, subscribers to the said fund on the one hand, and the officers and managers of the said railroad company on the other, the terms of which were substantially as follows:

The said citizens bound themselves to donate free of charge the necessary rights of way, and the necessary depot grounds free of any expense to the said railroad company upon and along any particular one of two named routes, and agreed further to pay in cash the sum of $5500. The said railroad company on its part bound itself to make selection of one of the two routes and one of the two depot sites and to erect thereon and maintain a depot for the use of the citizens of the said town of Pontotoc. That this contract, after being reduced to writing, was signed, sealed and duly attested, and a copy thereof or the original was delivered to the committee of citizens which to the best recollections of affiant, which was composed of affiant, J. W. Bell, and R. P. Brown. Affiant further says that he cannot now say with certainty which one of the three persons finally took charge of this written instrument, but he says that he

has made diligent search through all his files and papers, has made diligent search in all places where such papers are usually kept by him, and where it would be likely to be found, if in his possesson, and he has been totally unable to find the said paper. Affiant would show further that pursuant to the said agreement, the said railroad company inspected and selected one of the routes designated in the said agreement, and located its lines along said route so selected, and selected as a depot site the spot where the said order of the Railroad Commission of the State of Mississippi designated as the site of the new depot by said Commission ordered to be built, and thereupon deeds of gift were executed by the citizens of the said town to the said railroad company to the rights of way and depot grounds as selected by the said railroad company, and the afore mentioned sum of $5500 was then paid in cash to the said railroad company. The railroad was then built along the route selected, which is the present route of the narrow gauge railroad into the town of Pontotoc. The said depot was then built upon the said "old site," and there it remained until it was burned on the 14th day of February, 1903. The proposed new line of the Gulf & Chicago Railway Company leaves this line of the narrow gauge railroad about one half mile north of the old depot site, and the line of narrow gauge railroad from the proposed new line to the old depot site was the line of railroad located and built in pursuance of said agreement with the town of Pontotoc. Every foot of the right of way from the new proposed line to the old depot site was donated by the property owners thereof in pursuance of said agreement, and as an inducement to the projectors and owners of the original owners of the narrow gauge railroad to locate their line and depot in a suitable and convenient place in the said town. Affiant would further show that when he and other citizens of the town of Pontotoc were first informed that complainant had acquired the property, management and control of the Gulf & Chicago Railroad Co., and long before the location of the so-called new line of railway, he had informed the then President of the Mobile, Jackson & Kansas City Railroad one F. B. Merrill, that the town of Pontotoc has this agreement and contract with the narrow gauge railroad, and Mr. Merrill was plainly and repeatedly notified that the citizens would insist on complainant's maintaining a depot on the old site; was informed that every legal device would be employed to compel, if necessary, complainant to maintain its depot on

the old site; was informed by affiant that the Railroad Commission of the State of Mississippi would be appealed to, if an effort was made to move the depot. Affiant in private conversation and in public meetings, and long before the said proposed new line was ever finally surveyed, laid out and located, warned complainant, through its agents and officers of the desire and intention on the part of the said citizens to insist that the depot should not be changed. Affiant states further that the taxable property of the town of Pontotoc amounts to something like $350,000, as he is informed and believes, and that probably all except about $20,000 worth lies east of the proposed new depot site. The principal business houses of the town of Pontotoc are located near the public square of the town. Nearly all of these business houses, representing an outlay of over $50,000 or something about that amount in the opinion of the affiant have been built since the narrow gauge railroad was constructed to the town of Pontotoc, and they were constructed in view of the location of the depot. If the depot is removed to the proposed site these business houses will depreciate in value probably 25 per cent., and the location of the depot where complainant proposes to place it would mean the confiscation of property of the business men of the town to a large amount of money. The proposed new depot site is three quarters of a mile from the court house in the town of Pontotoc, and there is not a business house nearer than three quarters of a mile to the said proposed depot site. The roads from the business and settled portions of the town to the said proposed depot site are in bad condition. To get from the town to the depot proposed by complainant, it is necessary to go down one large steep hill and this road becomes almost impassable in the winter season. That a conservative estimate of the cost of putting any one of the two roads leading from the court house in said town to the proposed depot site would be several thousand dollars inasmuch as to construct a suitable road would necessitate a great deal of grading the construction of a large and expensive bridge and other work.

Affiant would further show that the depot owned and operated by the said narrow gauge railroad was destroyed by fire on the 14th day of February, 1903, and that the said complainant, although in charge of the said railroad, has never rebuilt the said depot, and has not constructed any other depot for

the use of the citizens of the said town, and that the present depot facilities of the said railroad consist of a small rough freight room, and an old narrow gauge passenger coach. The said freight is insufficient to contain the freight and other merchandise shipped to the said town, and often is placed outside on a small platform adjacent to said freight room, or scattered around on the ground so affiant is informed and believes. The said passenger coach used as a passenger depot, also contains the ticket office and express office, and no separate accommodations are made for the two races, and is totally inadequate to accommodate the wants of the traveling public in a suitable manner. The town of Pontotoc at the last census had a population of 1030 so affiant is informed, according to the official figures of the census bureau. Since then the town has grown in population and according to all known and established method of estimating the natural growth in population ought to contain at least 1300 people. Affiant would further assert that complainant or the Gulf & Chicago Railroad Company, whichever it is, is even now doing work on the grade through the town of Pontotoc, and the same is not completed. That a public meeting held in the town of Pontotoc upon the occasion of the visit of the present Railroad Commission to the town of Pontotoc, a vote of the citizens present was taken upon the question of their preference as to the location of a depot, and this vote was taken after a full discussion of the question, and after witnesses had been heard upon the question, and the majority in favor of leaving the depot where it is now was in the proportion of four to one in opinion of affiant. Affiant states the complainant or its lessor, the Gulf & Chicago Railway Company, already has a line of narrow gauge railroad established from the point where the proposed line leaves the present line to the old depot site which is probably not more than half a mile.

And further affiant sayeth not.

O. C. CARR.

Sworn to and subscribed before me this 27th day of April, 1904.

R. S. STATEN, Notary Public.

Filed February 3, 1904.

Affidavit of C. L. Harris.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

IN THE CIRCUIT COURT, IN EQUITY.

Mobile, Jackson & Kansas City Railroad Company, Plaintiff,

vs.

Mississippi Railroad Commissioners, et al., Defendants.

AFFIDAVIT OF C. L. HARRIS.

This day personally appeared before me the undersigned, Notary Public of the County of Shelby, State of Tennessee, C. L. Harris, personally known to me, who being by me first duly sworn to speak the truth, the whole truth and nothing but the truth, makes oath as follows:

My name is C. L. Harris, I am a resident citizen of the county of Shelby, State of Tennessee; in the year 1887, and many years both prior and subsequent thereto, I was a resident citizen of the town of Ripley, county of Tippah, State of Mississippi; I was one of the original stockholders in the Gulf & Chicago Railroad Company, a corporation duly chartered under the laws of the states of Mississippi and Tennessee; said corporation for many years prior to the year 1903, maintained and operated a narrow gauge line of railroad from the town of Middleton, in the State of Tennessee, to the town of Pontotoc, in the State of Mississippi; the said narrow gauge line of railroad was constructed to the said town of Pontotoc in the State of Mississippi, in the year 1887 or 1888.

When the said narrow gauge line was in course of construction southward through the county of Pontotoc, State of Mississippi, it became necessary to decide as to the exact location of the line with reference to the town of Pontotoc and the exact location of a depot in and about said town. The managers, owners and directors of the narrow gauge railroad were, at the time, contemplating the location of the said line of railroad along a line west of the town of Pontotoc and the location of their said depot at a point on the said contemplated line beyond the corporate

limits of said town; while this matter was being considered by the officers and directors of the said narrow gauge railroad, certain citizens of the town of Pontotoc, property owners of said town, entered into negotiation with the said owners, directors and managers of the said railroad company, looking toward the location of the said line and the said depot which would work no inconvenience or injury to the business interest of the said town; pursuant to such negotiations, the said citizens made an offer to the said officials of the said railroad company, proposing to pay the sum of Fifty five Hundred ($5,500) Dollars in cash and to donate to said railroad company the rights of way through the said town and the sufficient grounds for depot and switching purposes within said town upon the express condition that the said line of railway should run through the said town along one of two certain routes by the said citizens and the said railroad officials designated, and upon the further condition that a depot for the use and convenience of the public should be located upon one of the two designated spots, the choice being left to the railroad as to which should be selected. Said proposition was by the railroad company accepted and the proposals of the citizens and the agreement of the railroad company was reduced to writing signed and duly executed; in pursuance of said written contract the citizens of the town of Pontotoc duly paid to the said railroad company the said sum of $5,500, and an agreement and selection having been made of the route of said line and the location of the said depot, the said citizens caused to be executed and delivered to the said railroad company deeds to the rights of way over and upon all the lands in the town of Pontotoc crossed by said line, and also deeds to depot grounds so donated being deemed ample and sufficient to the railroad company; and said railroad company thereupon in pursuance of said contract and agreement constructed its line of railway through the said town to the said depot grounds so mutually agreed upon, and upon said depot grounds erected its depot, and from the said year, 1887 or 1888 to the year 1903, used said depot as its sole and exclusive station for Pontotoc, and is using now a temporary depot erected on said grounds as affiant is informed and believes; and the said depot so constructed and maintained was upon the site designated as the "old site" in the order of the Mississippi Railroad Commission, dated January 12, 1904, and made an exhibit to the Bill of Complaint filed in this cause. At the

time said contract and agreement was made, the said Gulf & Chicago Railroad Company contemplated the construction of its line of railway southward from the town of Pontotoc through the State of Mississippi, as set forth in the charter of incorporation of said line, and the proposed route of said railway south from the said town of Pontotoc had been inspected, surveyed and examined.

The said sum of $5,500 was the estimated additional cost of constructing the line from the present depot site southward over and above what would be the cost of running the line on the western route originally proposed. The said railroad company had, before locating the said depot examined into the feasibility and practicability of the route southward from the depot, and found that same could be readily constructed at an additional cost of $5,500, and when the said depot was located, it was the expectation and contemplation of the said railroad company to construct said line southward from the present or old depot site. Affiant was for many years the General Manager of the Gulf & Chicago Railroad Company and was interested financially as a stockholder in all the above mentioned negotiations and is familiar with the whole course of the negotiations.

And further affiant sayeth not.

C. L. HARRIS.

Sworn to and subscribed before me this the 21st day of April, 1904.

JOHN W. HARRIS, Notary Public.

UNITED STATES OF AMERICA,

Eastern Division, Northern District of Mississippi.

UNITED STATES CIRCUIT COURT, IN EQUITY.

April Term, 1905.

The State of Mississippi, et al.,

vs.

Mobile, Jackson & Kansas City Railroad Company, et al.

Affidavits of W. A. Dozier, O. C. Carr, J. W. Bell, A. J. Clarke, R. P. Brown, J. E. Walker, L. A. Latham and others, taken by

consent before R. S. Staten, Notary Public of the town of Pontotoc, County of Pontotoc, State of Mississippi, to be read on motion to dissolve the injunction in said cause when the same shall be heard in said court.

AFFIDAVIT OF W. A. DOZIER.

This day personally appeared before me, R. S. Staten, Notary Public as aforesaid, W. A. Dozier, who being first duly sworn makes oath as follows: That he is sixty-one years of age, and now holds the office of County Surveyor of Lee County, Mississippi, and that he has had long experience as a surveyor and a civil engineer. That he was recently employed to make a survey of the grounds of the old depot in the town of Pontotoc, as formerly located and used by the Gulf & Chicago Railroad Company, and its successor, the Gulf & Chicago Railway Company (said depot being burned in the spring of the year, 1903).

This survey was made on the 30th inst.; that he also at said time made a careful and accurate survey of the depot grounds and track of the M. J. & K. C. R. R. Co. Affiant herewith files a diagram of that portion of the territory of the town of Pontotoc on which the two respective depots referred to are located, marked, Exhibit "A," and made a part of this affidavit. The old original plan of the town of Pontotoc, as shown on said diagram is on Section 4 and S. W. ¼ of Section 33, Township 10, Range 3, East. and has a margin left of the western boundary of said corporation, being a part and parcel of said corporation for the purpose of egress and ingress, answering the purpose of a street; from the western boundary of the original plan, town of Pontotoc, to the old or burned depot to the centre of railroad track marked on diagram 1 to 2 is 372 feet, and from 2 to 3 with railroad track, S. 42½ O. E. to where said railroad track strikes the western boundary of the said original plan is 629 feet, and said track continues in said western margin of said O. P. P., for a distance of 22 feet. That the said old depot as shown by marks and signs of the fire was nearly entirely situated in Coffee Street, 372 feet from the western boundary line of the said O. P. P., and on that portion of street between lots 21 and 40, as shown on diagram. Affiant measured the distance up the track of the old G. & C. R. R. from the old depot to the point where the said old railroad diverges from the present main line of the M. J. & K.

C. R. R., and found the distance to be 5,748 feet and the grade 2½%. The distance from the said point of divergence to the present location of the new depot of the said M. J. & K. C. R. R. along the new route of the said railroad was found to be 3,300 feet; affiant then surveyed a line from the old depot site northward to a point on the new or present line of the said railroad, and found that the distance was 4,900 feet.

This last mentioned route or line was found to be practicable, feasible route for the location and construction of a railroad line, and could be built so as to make no larger curve than one of four degrees; affiant found that the distance from the new depot along the new route to the point of the main line where the said loop line from the old depot would join the main line was 3,100 feet.

And further affiant sayeth not.

W. A. DOZIER.

Sworn to and subscribed before me this the 1st day of April, 1905. R. S. STATEN, Notary Public.

Affidavit of J. L. Smith.

STATE OF MISSISSIPPI, Clay County.

This day personally came before me the undersigned authority J. L. Smith, who being by me first duly sworn, on oath, says:

That he is a resident citizen of the town of Maben, in Oktibbeha county, Mississippi, and is well acquainted with the line of road of the Mobile, Jackson & Kansas City through that section; that previous to the construction of said line of railroad through that vicinity, it was the intention of said company to locate and build its line of road by way of the town of Mathiston, three miles west of the town of Maben, as evidenced by locating survey and actual construction work thereon; subsequently the company entered into a contract with the citizens of the town of Maben, to locate and build their line of road by way of the town of Maben and on account of the increase in cost of construction from increasing the length of the line and the cubic yardage they required of the citizens of Maben Six Hundred and Thirty ($630.00) Dollars and the right of way from intersection

to intersection, together with necessary depot grounds in the town of Maben to which requirement the citizens of the town of Maben acceded, and signed a written contract to this effect, December 17, 1903, which said contract was also signed by the railroad company by F. E. Dewey, General Manager. I will mail said contract or a copy thereof to Chancellor W. J. Lamb upon my return home. Said contract provided that the citizens of the town of Maben enter into a bond in the sum of Two Thousand ($2,000) Dollars to save company harmless against any lawsuits that might arise in the town of Mathiston on account of the failure of said company to build its line by said town. At this time said company had expended fifty-one hundred and thirty ($5,130.00) Dollars (according to their claims) on the original line by way of Mathiston. The citizens of Maben proceeded to secure the right of way on the newly adopted line in pursuance of the requirements of the contract, and the railroad company entered upon the construction of said line by way of the town of Maben. After work on said road had progressed for approximately two months, said company determined to violate its said contract and build its line of railway by way of Mathiston and near the corporate limits of Maben, thereby increasing the length of its line approximately one mile more than the original line by way of the town of Maben, at the same time abandoning approximately one-half mile of grading on said original line by Maben. A direct line from Ackerman to Houston was by the town of Maben but in order to go by the town of Mathiston a divergence was made approximately three miles south of Maben to the town of Mathiston, crossing the southern railway at Mathiston, running thence in an easterly direction parallel with said southern railway to a point on the original line by Maben, near the corporate limits of Maben.

J. L. SMITH.

Sworn to and subscribed before me this April 3rd, 1905.

SID A. DEAS,
Chancery Clerk of said County.

Affidavit of J. G. Smith.

This day personally appeared before me, the undersigned Notary Public, J. G. Smith, who being first duly sworn, makes

oath that he is a merchant of the town of Pontotoc, and is engaged in the sale of general merchandise, and carried a stock of goods worth as much as $10,000; that since the removal of the depot from the old to the new site, he has been inconvenienced and embarrassed in his business by the difficulty in getting goods delivered to his business house, and that the expense of drayage has been largely increased, in many cases as much as fifty per cent.; that he believes the permanent location of the depot where it is now situated, would result in loss to the business men of said town, and would cause a great depreciation in the value of all property in said town.

And further affiant sayeth not.

J. G. SMITH,

Sworn to and subscribed before me this 1st day of April, 1905.

R. S. STATEN, Notary Public.

Affidavit of R. V. Fletcher.

STATE OF MISSISSIPPI, Pontotoc County.

CHANCERY COURT, April 8, 1905.

The State of Mississippi, et al.,

vs.

Mobile, Jackson & Kansas City Railroad Company, et al.

This day personally appeared before me, R. S. Staten, a Notary Public in and for the said county and state, R. V. Fletcher, personally known to me, who being by me first duly sworn, makes oath as follows:

That he is thirty-five years old,and is a lawyer by profession; that the firm of which he was formerly a member was employed some time in the spring of the year 1904, to assist the Attorney General of the State of Mississippi in certain litigation between the Railroad Commission of the State of Mississippi and the Mobile, Jackson & Kansas City Railway Company and the Gulf & Chicago Railroad Company; that he is familiar with the whole

course of the litigation both in the Federal Court and the Chancery Court. That the original bill was filed in this cause in the Chancery Court of Pontotoc County, on August 3, 1904; that the next succeeding term of the Chancery Court convened on the 1st Monday in September, 1904, and at said term of the Chancery Court, defendants made application to have the said cause removed to the United States Circuit Court for the Eastern Division of the Northern District of the said state. That the said cause was removed as asked for by defendants; that thereupon immediately thereafter, complainants made a motion in the said United States Circuit Court to have the said cause remanded to the said Chancery Court; that this motion to remand was not heard and determined by the said United States Circuit Court until the 4th day of April, 1905; that the said cause was remanded, on the hearing of the said motion, to the said Chancery Court on the date of the hearing thereof; that the answer in this cause was not refiled in the said Chancery Court until after the said cause was remanded; affiant would state further that as attorney for the said Railroad Commission, and of certain interested citizens in the said town of Pontotoc, he is conversant with all offers and propositions that have been made by defendant company; that he knows of no selection by the said defendant company of any desired right of way or depot grounds within the original corporate limits of the said town; that no demand has been made on the citizens of the said town for rights of way or depot grounds within said county seat by defendant company, as affiant is informed and believes; that affiant was informed by one of the attorneys for the defendant railroad that there was not room within the county seat for standard depot grounds, and that it would be impossible to locate the said depot within the said original county seat, for this reason; that so far as affiant has been informed, no survey has been made and no line has been located through the said county seat by the said defendant companies, nor have the citizens of the town of Pontotoc been advised of the wishes and desires of the said defendant company as to any particular line or site for a depot; that the said citizens have not been in a position to make formal tender of right of way of depot grounds, being not informed as to what would be acceptable to the said railroad company.

And further deponent sayeth not.

R. V. FLETCHER.

Sworn to and subscribed before me this the 8th day of April 1905. R. S. STATEN, Notary Public.

Affidavit of J. W. Bell.

This day personally appeared before me R. S. Staten, Notary Public, etc., as stated, J. W. Bell, who being be me first duly sworn, makes oath as follows:

That he is fifty-three years of age, and has passed all his adult life within the corporate limits of the town of Pontotoc; that the old depot of the G. & C. R. R. Company was almost entirely within the street known as Coffee Street in the town of Pontotoc and between lots 21 and 40; same was located there by order of the Board of Mayor and Aldermen of the town of Pontotoc; that the Minute Book of the said Board of Mayor and Aldermen has been misplaced or lost and cannot be found after diligent search and inquiry; that Col. W. C. Falkner was the President and chief promoter of the G. & C. R. R. Co., and that when the said G. & C. Railroad was being constructed said Col. Falkner was in consulation with certain citizens of said town as to where the depot grounds should be established; that affiant was one of a committee to confer with the said official of the said road as to the location of the said depot, and that after conference and consultation and a full and complete examination of the grounds and surroundings, the said Col. Falkner agreed with certain citizens, to-wit: O. C. Carr, W. W. Bell, A. J. Clark, R. P. Brown, A. J. Brown, R. W. Flournoy, affiant and others to locate the depot either on the east side of the town or in the hollow on the west side of the town convenient to the public square where the entire business of the town was conducted , which place being only a few hundred yards distant from the court house. It was agreed that the said citizens should provide ample and sufficient rights of way and depot grounds through the said town and pay further the sum of $5,500 to the said Falkner as President of the said road; that in pursuance of the said agreement the said sum was paid to the said Falkner, and the said right of way and depot grounds were furnished and donated to the said railroad; that the amount of depot grounds so furnished were ample for all the needs of the public and that the

said Col. Falkner after due consideration selected a site west of the court house and there erected and maintained a depot and the depot remained there until in February, 1903, when it was burned and in 1904, the said site was abandoned by the M. J. & K. C. R. R. Company and the depot was established at a point about one mile west of the town of Pontotoc. This removal and abandonment was made in violation of the said contract, and against the order of the Railroad Commission of the State of Mississippi, and after the said M. J. & K. C. Railroad Company had begun a suit to set aside the order of the said Commission; that it would very greatly damage and injure the business interest of the said town to have the depot permanently established where it is now located; that the cost of delivering freights to the settled and business portion of the town has been increased more than fifty per cent. since the removal of the said depot.

That during the past winter for a period of more than a month the road from the said new depot to the town was practically impassable; that merchants could not get freight from the depot into the business houses; that the hacks and busses were unable to meet trains for a time, and passengers were greatly inconvenienced and exposed to the rigors of a severe winter in going to and from the depot; affiant further states that the old depot was located in Coffee Street and within the corporate limits of the said town and that he himself and others gave the officers of the G. & C. R. R. Company the sum of $5,500 and ample grounds for the said railroad.

That the grounds donated to the said railroad for the purposes aforesaid are in area 22,500 outside right of way square feet, which is shown on the map herewith filed and marked Exhibit "B." and made a part of this affidavit; that the corporate limits of the town of Pontotoc were established originally about the year 1837, and these limits were extended about the year 1854, all of which appears of record in the office of the Chancery Clerk of Pontotoc County.

Affiant asserts the fact to be that many years ago there was a survey made by the Memphis, Selma Railroad along two lines, one passing in the hollow on the east side of the town and one in the hollow on the west side of the town, and that several projectors have visited and surveyed routes from Pontotoc southward to Houston and the suggestion has never been made or objection

been heard that there was any unusual difficulty in getting south from the old depot site along a feasible and practicable route; that affiant has seen a route surveyed southward from the old depot site, and believes that such a route would be perfectly feasible and practicable and that it would be less expensive to construct the said railroad along such a route than the way it has been built; that affiant is informed and believes that the present route as selected and built by the said M. J & K. C. R. R. Company has been a difficult and expensive one, owing to the insecure foundation secured and that the same has been troublesome and expensive to the said railroad. Affiant further states that he knows the sentiment of the business men and property owners of the town of Pontotoc, and he feels safe in saying that if the present grounds now owned by the said defendant railroad companies are now indeed sufficient and ample, that the said business men stand ready, willing and anxious to furnish further and additional depot grounds conveniently situated if the Court should hold that to be the duty of the said citizens.

Affiant further states that the said railroad officers and promoters have always asserted that under no circumstances would they build their line and locate their depot elsewhere than where they have and that do demand for another right of way or depot site has been made and that it has been impossible for the citizens of said town to tender a specific and particular right of way or depot site, since the said railroad has never selected any particular route or expressed any intention or desire to do so.

And further deponent sayeth not.

J. W. BELL.

Sworn to and subscribed this 1st day of April, 1905.

R. S. STATEN, Notary Public.

Affidavit of L. A. Latham.

This day personally appeared before me, R. S. Staten, Notary Public, etc., L. A. Latham, who being by me first duly sworn, makes oath as follows:

That he is a merchant in the town of Pontotoc, engaged in the hardware business; that he received large shipments of goods of a bulky and heavy nature in the regular course of his business;

that he carried a stock of goods worth more than ten thousand dollars; that since the depot has been removed from the old site to the new site the cost of drayage and transportation from the depot to affiant's business house has been increased fully fifty per cent. of the former prices; that he considers that his real estate holdings in the town of Pontotoc are diminished in value fully ten per cent. by reason of the removal of the said depot; that the public convenience has been greatly interfered with by such removal; that he stands ready as a business man of the said town to contribute a fair amount for the purchase of additional depot grounds for the use of the said railroad company in case the courts should hold that this duty devolves upon the citizens of the said town.

That during the past winter, the roads from the said new depot to the settled and business portion of the said town were practically impassable for both freight and passenger travel; that affiant and other merchants were seriously embarrassed in their business by reason of their inability to have freights delivered promptly, and that merchants were subjected to storage and other chargees by the said railroad company at a time when the condition of the roads was such that freights could scarcely if at all be hauled from the depot to the town.

And further affiant sayeth not.

L. A. LATHAM.

Sworn to and subscribed before me this 1st day of April, 1905.

R. S. STATEN, Notary Public.

Affidavit of J. C. Kincannon.

STATE OF MISSISSIPPI, County of Alcorn.

Before me, N. O. Dickson, Circuit Clerk of the said county and state, personally appeared J. C. Kincannon, who being by me first duly sworn makes oath as follows:

I am a member of the Mississippi Railroad Commission and have served in that capacity for more than five years; I was a member of said Commission when a petition was presented to said commission asking for the consolidation of certain railway lines or corporations into a corporation to be known and desig-

vated as the Gulf & Chicago Railway Company; that in considering said petition and application it was a material consideration that the said petition stated that the old narrow gauge line should be broadened and standardized through its entire length from Middletown, Tenn., to Pontotoc, Miss.; that this particular phase of the matter was discussed by the said Commission and was an important and material consideration in securing the consent of the said Commission to said consolidation that in my opinion knowing the sentiment of the members of the said Commission, the said consolidation would not have been ratified and confirmed except for the promise of said corporations to so broaden and standardize the said narrow gauge line.

I further state that I was present in the city of Mobile, Ala., when the deposition of General Manager F. E. Dewey, and the cross-examination of former engineer H. S. Jones, as witnesses on behalf of defendant companies were taken, and I heard the said statements of the said witnesses, and the paper which I make Exhibit "A" to this affidavit is a true and correct copy of said examinations; I further state that the paper which I make Exhibit "B" to this my affidavit is a true and correct copy of a compromise agreement made between defendant companies and the citizens of Decatur, Miss., in regard to a controversy therein pending. I offer both these exhibits and ask that they be taken as part of this affidavit.

J. C. KINCANNON.

Sworn to and subscribed before me this 14th day of April, 1905. N. O. DICKSON, Circuit Clerk.

Affidavit of A. J. Clark.

This day personally appeared before the undersigned Notary Public of the said county and state, A. J. Clark, who being duly sworn states as follows:

That he is a merchant in the town of Pontotoc, and has resided and done business in said town for more than twenty years; that he contributed to the fund for the location of the depot on the old site at the time it was there established and located by the former owners of the railroad; that he so contributed upon the distinct understanding and agreement that the

depot should be located where it was located, as one of two possible and available sites; that since the removal of the depot from the old to the present site, he has been forced to pay a larger increased rate for drayage and that his business has been inconvenienced and damaged by the inability to get prompt delivery of freight from the new depot, such delay and inconvenience being caused by the conditions of roads from the depot to the town during the bad weather of the present year; that he believes the retention of the depot at the present site would materially interfere with and injure all the material interests of the business public of the said town of Pontotoc.

And further affiant sayeth not.

A. J. CLARK.

Sworn to and subscribed before me this 1st day of April, 1905.

R. S. STATEN, Notary Public.

Affidavit of J. H. Salmon.

This day personally appeared before me, the undersigned, Notary Public, J. H. Salmon, who being by me first duly sworn, makes oath that he is a member of the firm of Salmon & Wilson, and that the firm of which he is a member are engaged in the business of selling general merchandise both at wholesale and retail and that the stock of goods on hand at the present time will approximate the sum of $25,000.00; that affiant is also engaged as a cotton buyer during the cotton season, and that for and during the present cotton season he has bought about 2,000 bales of cotton.

That he has been forced to pay the sum of ten cents for each and every bale of cotton delivered by him to the railroad company for transportation over and above what it would cost and did cost before the removal of the depot to the present site; that for a portion of the time as much as fifteen cents per bale was demanded and paid for the delivery of the said cotton; that the cotton platform in general use by cotton buyers and the public is situated near the old depot site where the cotton can be loaded directly on cars for transportation, and that the removal of the depot necessitates the drayage of this cotton from

the said old depot site to the new, thereby causing the additional mentioned; that the cost of delivering goods into affiant's business house has been also greatly increased by the said removal, amounting to from old depot $6.00 per month, from new depot $20.00 increase over and above the former cost of the said drayage; that affiant believes that the location of the depot at the new site will permanently injure the business interests of the town; affiant stands ready to contribute his fair share of the expenses of providing additional depot facilities and rights of way for the said railroad, in case the same shall be deemed necessary by the court.

J. H. SALMON.

Sworn to and subscribed before me, this 1st day of April, 1900.

R. S. STATEN, Notary Public.

Affidavit of E. C. Finley.

STATE OF MISSISSIPPI, Lee County.

This day personally appeared before me, F. L. Kincannon, Clerk of the Circuit Court in and for said county and state, E. C. Finley, who being by me first duly sworn makes oath as follows:

I am thirty-six years of age, and am a civil engineer by profession and live in Tupelo, Miss., and maintain an office in St. Louis, Mo., where I have been located three years; I have had experience in the location and construction of railroads, having been employed in construction work for twelve years; I am a member of the American Society of Civil engineers. On Aprh 13th, 1905, I made a survey of a line southward from the south end of the narrow gauge railroad in Pontotoc, Miss., to a point nine hundred feet north of the first tressel on the main line of the M. J. & K. C. Railroad, I have platted and mapped a possible route by which a railroad line could be constructed from said old depot site to intersect with the main line of the M. J. & K. C. as at present established with curve not to exceed four degrees, this route is shown by red line on map which I herewith attach to this affidavit and which I have marked Exhibit "A"; this route could be constructed so as to make no sharper curves than one of four degrees; I see nothing impossible and nothing

presenting unusual engineering difficulties in this route as shown on said map.

I have casually examined the line as at present established and am of the opinion that if the new line had never been so located as it is it would have been perhaps possible to run a line south from the old depot along a route not excessively more difficult than the one now used.

EDWIN C. FINLEY.

Sworn to and subscribed before me, this 14th day of April, 1906. F. L. KINCANNON, Circuit Clerk.

Affidavit of R. P. Brown.

This day personally appeared before me, the undersigned Notary Public, R. P. Brown, who being by me first duly sworn, makes oath that he is a resident citizen of the town of Pontotoc, and lived in said town when the railroad was first built to said town; that he was a member of a committee to secure the location of the depot at some accessible and convenient location, and that he was one of the persons who effected the agreement with Col. Falkner and his representatives, looking toward the location of the depot.

That he paid part of the bonus that was given to the officials of the old company for the purpose of securing a desirable location for the depot, and that his money was contributed upon the distinct understanding and agreement that the depot should be located where it was located; affiant distinctly disavows that the said sum of money was paid simply to get the railroad to the town of Pontotoc, but on the other hand avers that it was paid upon the contract and understanding of the company to place the depot on one of two convenient and accessible locations, and in pursuance of said agreement the said depot was located and established at the place where it stood until burned in 1902.

That affiant is now engaged in the business of buying cotton during the cotton season, and that during the present year he has bought about 3,000 bales, and that owing to the removal of the depot from the site of the cotton platform, the cost of delivering the cotton to the railroad for necessary transportation has been increased ten cents per bale; that about ten thousand

bales of cotton have been sold or will probably be sold during the present cotton season, which will mean a clear additional expense of more than a thousand dollars upon this season alone; that the cost of delivering freight to merchants in the said town has been greatly increased and that much and serious inconvenience has resulted from the said removal of the said depot.

And further affiant sayeth not.

R. P. BROWN.

Sworn to and subscribed before me this 1st day of April, 1905.

R. S. STATEN, Notary Public.

Affidavit of W. W. Bell.

STATE OF MISSISSIPPI, Pontotoc County.

This day personally appeared before me, R. S. Staten, Notary Public in and for the town of Pontotoc, said county and state, W. W. Bell, who being by me first duly sworn makes oath as follows:

I am a citizen of the town of Pontotoc, and have resided in said town continuously for the past five years; I remember the time when a public meeting was held in the town of Pontotoc in the spring or summer of 1903, at which there was a discussion between some of the citizens of the said town and certain officials of the M. J. & K. C. Railroad Company, in regard to the location of a depot for said town; I was present at said meeting and heard everything that was said; the meeting was not largely attended so far as the citizens of the town of Pontotoc was concerned; Col. Merrill, the President of the said railroad company, was there and stated to the meeting in a public address that it was out of the question to talk about putting the depot on the old site; that it was useless to consider or discuss such a plan; that the only thing before them to decide was whether to put the depot on the present or new site, or to put it out still further west; that under no circumstances, would the railroad company consider any proposition to put the depot on the old site; that the company would go three or four miles west of the town before they would locate the depot on the old depot site. The proposition submitted to the house at said meeting and voted

on was whether they would prefer its location still further west; the question as to their preference between the old site and the new site was never submitted to the body; furthermore, the vote stood something like 31 to 6 on the question submitted, and there are about 200 legal voters in the present corporate limits of the town of Pontotoc; a large majority of the citizens of the town present refrained from voting on the proposition, and the affirmative vote was largely made up of country people who were present in considerable numbers. I think I know the sentiment of the people of the town of Pontotoc as to what site they would prefer and I feel sure that a very large majority of the tax payers and business men of the town prefer the old site as a location for the depot.

And further deponent sayeth not.

W. W. BELL.

Sworn to and subscribed before me, this 13th day of April, 1905. R. S. STATEN, Notary Public.

Affidavit of J. E. Walker.

This day personally appeared before the undersigned, Notary Public of the said county and state, J. E. Walker, who being first duly sworn makes oath that he is engaged in the real estate business in the town of Pontotoc, owning six business houses and twenty residences for rent or sale; that he feels and believes that the removal of the depot permanently from the old to the present or new site would depreciate the value of his property twenty-five per cent. That he knows that the condition of the public highways from the business section of the town to the depot has been well nigh impassable for several weeks during the present year; that the town of Pontotoc, although it has spent large sums on the construction and repair of roads to the depot site has not succeeded in putting the said roads in a good and passable condition; that affiant knows that the business interests of the town have suffered by reason of the removal of the depot to its present location; affiant stands ready as a business man and property owner of the said town to contribute his share to secure further and ampler depot grounds and facilities in case the same shall be required by the court; that he is familiar with the old depot site, and the grounds thereabouts, and he

believes that the present old depot grounds are ample and sufficient for all necessary railroad purposes; that the cotton business of the town of Pontotoc is its chief source of business and that it has been and is being materially injured by the present location of the depot.

J. E. WALKER.

Sworn to and subscribed before me, this 1st day of April, 1905.

R. S. STATEN, Notary Public.

Affidavit of J. W. Bell.

STATE OF MISSISSIPPI,
Pontotoc County.

IN THE FEDERAL CIRCUIT COURT, SOUTHERN DISTRICT OF MISSISSIPPI, IN EQUITY.

Mobile, Jackson & Kansas City Railroad Company
vs.
Mississippi Railroad Commission.

AFFIDAVIT OF J. W. BELL.

This day personally appeared before me, R. S. Staten, a Notary Public in and for the county of Pontotoc, State of Mississippi, J. W. Bell, personally known to me, who being by me first duly sworn, makes oath as follows:

Affiant is a resident citizen of the said county and state, and of the town of Pontotoc; he has resided in the said town of Pontotoc for thirty-five years; he was living in said town in the years 1886, 1887, 1888 and every year since these dates.

About the years 1886 or 1887, the owners and managers of the railroad company constructing the line of narrow gauge railroad from Ripley, Miss., to Pontotoc, were contemplating the location of their line of railway along a route west of the present line of railway, and west of the town of Pontotoc; affiant was one of a committee of citizens of the said town, appointed to negotiate with the said railroad construction, looking toward such a location of the line of railway and such a location of the depot as would be beneficial to the citizens had a consultation

with the officials of the road in regard to the location of the line and depot.

The railroad company was, in this negotiation, represented by the late Col. W. C. Falkner and by C. L. Harris, now a resident of Shelby County, Tennessee, and others interested in the construction of the line of railway; as a result of such negotiation, a written contract or agreement was drawn up and signed by the officers of the railroad on the one hand, and certain citizens of the town of Pontotoc on the other, providing that the railroad should be built through the town of Pontotoc. The routes were mentioned by the citizens and two depot sites were named, either of which would be acceptable to the people of the town of Pontotoc; it was left optional with the railroad company as to which should be used. The said written contract provided that the citizens of said town were to donate to said railroad company the rights of way along either of the said routes, and ample depot grounds upon whichever site should be selected, and should pay the said railroad company the sum of $5,500 in cash; the reason why the sum was fixed at $5,500 was because the said officials were of the opinion after investigation that it would cost $5,500 more to run their line of railway through the said town along either one of the proposed routes than it would cost to run the road on the eastern line originally proposed by said company; the railroad company in pursuance of the said agreement made a selection of their route and selected one of the two proposed depot sites, and thereupon deeds were made to the rights of way and to land for depot purposes; one R. W. Flournoy, now deceased, made the railroad company a deed to a right of way over lots Nos. 2, 3, 18 and 19 in said town; affiant made a deed to the depot grounds which are situated on lot No. 21, and also made a deed to right of way over lots Nos. 22 and 19, all in Section 5, Township 10, Range 3, East, in the town of Pontotoc. These deeds are of record in the office of the chancery clerk of Pontotoc county, and certified copies of said deeds are herewith appended, marked "Exhibits 1 and 2," respectively, and are asked to be taken as part of this affidavit. Affiant further says that the grantee named in said deeds is the Gulf & Ship Island Railroad Company; affiant cannot say positively at this time why the deeds were made in that manner, but he states on information believed true that the Gulf & Ship Island

Railroad Company had some sort of arrangement with Col. W. C. Falkner, and his associates, who owned the Ripley Railroad Company, looking towards a consolidation of the two lines, so that when completed the said Gulf & Ship Island Railroad Company should have a continuous line from some point on the Guif of Mexico to the town of Middleton, Tenn.; affiant says further that on pages 208 and 209, Deed Book 44, of the records of deeds, on file in the office of the chancery clerk of Pontotoc County appear two deeds of trust, executed by the said Gulf & Ship Island Railroad Company to W. C. Falkner, who was the active promoter of the railroad company and its successor, the Gulf & Chicago Railroad Company. These two deeds of trust were executed on the 28th day of July, 1886, and certified copies of these two deeds of trust are herewith appended, marked "Exhibits Nos. 3 and 4," and are hereby asked to be taken as part of this affidavit. However, that may be, affiant says that the narrow gauge railroad was built by the people with whom the said contract as to depot location was had, and that the said rights of way mentioned in the two deeds made exhibits hereto cover the land extending from the present depot site northward to the point where complainant proposed to leave the old line of the Gulf & Chicago Railroad Company; affiant says further that the said contract was entrusted to the care and keeping of either O. P. Carr or R. P. Brown; affiant has made diligent search through all his papers, and in every place where such papers are usually kept, and has not found same and believes it to be lost; affiant states further that he is a property owner in said town and that he has expended considerable sums of money in the erection of permanent and valuable business houses for rent, and that he invested his money in said buildings on the faith of the railroad company's contract with the town of Pontotoc, and that the removal of the depot as contemplated by complainant would result in the material depreciation of the value of his property; that in his judgment, the effect of such removal would mean a loss of twenty-five per cent. in the value of affiant's property and of the other business property of said town.

Affiant further says that complainant's line to run it by the old depot site would not be more than one-half mile further than to run as complainant proposed to run it; affiant further says

that the additional cost to complainant of running its line by the old depot site would not exceed the cost to the town of Pontotoc of grading and putting in first-class condition a street from the court house to the proposed depot site.

And further affiant sayeth not.

J. W. BELL.

Sworn to and subscribed before me, this 30th day of April, 1904. R. S. STATEN, Notary Public.

Exhibit "A".

Deed.

R. W. FLOURNOY to GULF & SHIP ISLAND RAILROAD COMPANY.

THE STATE OF MISSISSIPPI, Pontotoc County.

In consideration of the benefits to accrue to me by the building of the Gulf & Ship Island Railroad and the sum of One Dollar to me paid, the receipt of which is hereby acknowledged I convey and warrant to the Gulf &Ship Island Railroad Company the land described as follows:

A strip of land one hundred feet wide, to be measured fifty feet from the centre of railroad track on each side, through lots Nos. 2, 3, 18 and 19, being part of N. ½, S. 5, T. 10, R. 3, East, in the town of Pontotoc, State of Mississippi;

The same being for right of way, switches, side-tracks, depot grounds and other railroad purposes.

In testimony whereof I hereto set my hand this 3rd day of May, A. D., 1886.

R. W. FLOURNOY.

THE STATE OF MISSISSIPPI, Pontotoc County.

This day personally came before me, W. P. Lowery, a chancery clerk in and for said county, the above named R. W. Flournoy, who acknowledged that he signed and delivered the foregoing deed on the day of the date thereof and for the purposes therein set forth.

In testimony whereof I hereto set my hand and seal this the 3rd day of May, A. D., 1886.

W. P. LOWRY, Clerk.

The deed of which the next foregoing is a true copy was filed for record at 9 o'clock A. M., on the 20th day of May, A. D., 1886, and duly recorded the 25th day of May, 1886.

W. P. LOWRY, Clerk.

THE STATE OF MISSISSIPPI,
Pontotoc County.

I, W. T. Furr, clerk of the chancery court in and for said county and state, do hereby certify that the above and foregoing contained a full, true, perfect and complete copy of deed from R. W. Flournoy to Gulf & Ship Island Railroad Company, as the same appears of record in my office, in record book number 42, page 361.

Given under my hand and seal of said court affixed this 30th day of April, 1904.

W. T. FURR, Clerk.

Exhibit "B".

Deed.

J. W. BELL to GULF & SHIP ISLAND RAILROAD COMPANY.

THE STATE OF MISSISSIPPI,
Pontotoc County.

In consideration of the benefits to accrue to me by the building of the Gulf & Ship Island Railroad, and the sum of One Dollar to me paid, the receipt of which is hereby acknowledged, I convey to the Gulf & Ship Island Railroad Company, the land described as follows: A strip of land one hundred feet wide to be laid off as to measure fifty feet on each side from the centre of the track through lots Nos. 22 and 19, on N. ½, S. 5, T. 10, R. 3, East; also a piece of land described as follows: Beginning at S. W. corner, lot No. 21, running sixty feet, then east one hundred twenty feet, thence south sixty feet, thence west with street to beginning, on N. ½, S. 5, T. 10, R. 3, East, in town of Pontotoc, in said county and state, the same being for the right of way, switches, tracks, depot grounds and other railroad purposes.

In testimony whereof I hereto set my hand this the 8th day of June, 1886.

J. W. BELL.

THE STATE OF MISSISSIPPI,
Pontotoc County.

This day personally came before me, N. W. Bradford, a Justice of the Peace in and for the said county, the above named J. W. Bell, who acknowledged that he signed and delivered the foregoing deed on the day of the date thereof and for the purpose therein set forth.

In testimony whereof I hereto set my hand and seal this the 8th day of June, A. D., 1886.

[SEAL] N. W. BRADFORD, J. P.

The deed of which the next foregoing is a true copy was filed for record at 3 o'clock P. M., the 9th day of June, 1896, and duly recorded the 17th day of June, 1896.

J. M. NISBET, Clerk.

THE STATE OF MISSISSIPPI,
Pontotoc County.

I, W. T. Furr, Clerk of the Chancery Court in and for said county and state, do hereby certify that the above and foregoing one and a half pages, contain a full, true and perfect and complete copy of deed of conveyance from J. W. Bell to the Gulf & Ship Island Railroad Company, as the same appears of record in my office in Record Book No. 61, page 292.

Given under my hand and seal of said court in the town of Pontotoc, this 30th day of April, 1904.

W. T. FURR, Clerk.

Exhibit "C".

Deed of Trust.

GULF & SHIP ISLAND RAILROAD COMPANY to W. C. FALKNER.

This indenture made and entered into this the 17th day of March, 1886, by and between the Gulf & Ship Island Railroad Company, of the first part, John W. T. Falkner, as trustee, of the second part, and W. C. Falkner, of the third part, WITNESSETH:

That for and in consideration of the sum of Ten Dollars, cash, this paid to the party of the first part by the party of the second part, the receipt of which is hereby acknowledged, the party of the first part hath this day bargained, sold and conveyed

and by these presents doth bargain, sell and convey to the second part all that part of the line of the Gulf & Ship Island Railroad now constructed or hereafter to be constructed between the town of Ripley and the town of Pontotoc, Mississippi, supposed to be thirty-six miles, more or less, together with all its roadbed, hereafter to be made, with all its bridges, cross-ties, culverts, right of way, iron or steel rails and rolling stock now owned or hereafter to be owned and possessed by the first party on said line of railroad between Ripley and Pontotoc, the intent and meaning of this deed is to convey to the second party all and every description of property owned now or hereafter to be acquired by said first party on that part of the line of said road lying between Ripley and Pontotoc, and the party of the first part will forever warrant and defend the title of said property to the party of the second part, his heirs and assigns against the lawful claims of all persons whatsoever, this deed is made in trust to secure the payment to W. C. Falkner the sum of Five Thousand ($5,000.00) Dollars which the first party owes to him, the said party of the third part, it being for money this day loaned to the party of the first part by the said W. C. Falkner, the first party hath this day made and delivered to W. C. Falkner a note for the sum of Five Thousand ($5,000) Dollars due and payable at twelve months after date, with interest from date at the rate of ten per cent. per annum until paid, if the first party shall pay to said W. C. Falkner said sum of Five Thousand Dollars when due, with all accrued interest, then this deed is to be null and void.

But if said sum is not paid when due, then the second party shall have the right to take possession of all of said property and sell the same for cash to the highest bidder at the court house in the town of Ripley, Mississippi, first advertising the time and place of sale by inserting the same in a newspaper published at Ripley for six weeks previous to the day of sale, and if no paper should be published at Ripley, the advertisement may be made in Union or Pontotoc counties, the proceeds of the sale shall be applied to the payment of the said sum of Five Thousand Dollars and interest and the cost of executing this trust; the surplus, if any, to be paid to the first party, if J. W. T. Falkner dies or refuses to act, the third party shall have the right to appoint another person to act as trustee.

In witness whereof the party of the first part hereunto set

the signature and seal of the Gulf & Ship Island Railroad Company on the day and year first above written.

THE GULF & SHIP ISLAND RAILROAD CO.,

By W. H. HARDY, President,
WM. HENRY, Secretary.

STATE OF MISSISSIPPI,
Hinds County.

Personally appeared before the undersigned, Mayor of the city of Jackson and ex-officio Justice of the Peace, in and for said county and state, W. H. Hardy, President, and Wm. Henry, Secretary, who acknowledged that they signed and delivered the above and foregoing instrument of writing on the day and year therein written as their act and deed.

Given under my hand and seal this 17th day of March, 1886.

JOHN McGILL [SEAL]

Mayor of Jackson and Ex-officio Justice Peace
Mayor of Jackson and Ex-officio J. P.

The deed of trust of which the next foregoing is a true copy was filed for record at 11 o'clock, A. M., on the 24th day of April, 1886, and duly recorded this the 24th day of August, 1886.

W. P. LOWRY, Chancery Clerk.
By J. D. JOHNSON, D. C.

THE STATE OF MISSISSIPPI,
Pontotoc County.

I, W. T. Furr, Clerk of the Chancery Court in and for said county and state, do hereby certify that the above and foregoing one and a quarter pages contain a full, true, perfect and complete copy of the deed of trust, executed by the Gulf & Ship Island Railroad Company, to W. C. Falkner, on the 17th day of March, 1886, as the same appears of record in my office, in Record Book No. 44, pages 210, 211 and 212.

Given under my hand and seal of said court affixed this 30th day of April, 1904.

W. T. FURR, Clerk.

Exhibit "D".

Deed of Trust.

GULF & SHIP ISLAND RAILROAD COMPANY to W. C. FALKNER.

This indenture made and entered into this the 28th day of July, 1886, between the Gulf & Ship Island Railroad Company of the first part, John W. T. Falkner of the second part, and W. C. Falkner of the third part, Witnesseth:

That in consideration of the sum of Ten Dollars, cash in hand paid to the first party by the second party, the receipt of which is hereby acknowledged, the said first party hath this day bargained, sold and conveyed, and by these presents doth bargain, sell and convey to the said second party, all that part of the line of the Gulf & Ship Island Railroad now constructed or hereafter to be constructed between the town of Ripley and Pontotoc, Mississippi, together with all roadbed now graded and hereafter to be graded between Ripley and Pontotoc, the said first party doth hereby sell and convey to the second party all the cross-ties now on said line together with all ties hereafter to be put on said line, also all iron or steel rails now on said line or hereafter to be put on said line, also all bridges, trestles, section houses, water stations, depot buildings now on said line or hereafter to be put or built on said line, also all property of every kind or description belonging to the said first party, which is now on that part of said line or hereafter to be put on that part of said line and the said first party will forever warrant and defend the title of said property to the second party, his heirs and assigns forever, against the lawful claims of all persons whatever, this deed is made in trust to secure the payment to said W. C. Falkner of the sum of Thirty Thousand ($30,000 Dollars which the said first party owes to the said W. C. Falkner, being for money this day loaned to the first party, hath this day executed and delivered to the third party a note for Thirty Thousand ($30,000) Dollars, due and payable two years from date, with interest from date until paid at the rate of ten per cent. per annum.

Now, if the first party shall fail to pay said debt and interest when due, then the second party shall sell all of said property, including all the line of said railroad between Pontotoc and

Ripley, for cash, to the highest bidder, at the courthouse in Ripley, Mississippi, first advertising time and place of sale by inserting the same in a weekly newspaper to be published in Ripley at the time, then publication may be made in any other paper in the State of Mississippi; the proceeds of said sale shall be applied to the payment of said debt and interest and the cost of this trust and the surplus if any to be paid to the said first party; if from any cause said John W. T. Falkner shall fail to perform the duties of trustee, said W. C. Falkner shall have the right to appoint another trustee.

Signed and agreed to the day and year first above written.

THE GULF & SHIP ISLAND RAILROAD COMPANY,
By W. H. HARDY, President,
WILLIAM HENRY, Secretary.

STATE OF MASSACHUSETTS,
County of Suffolk.
City of Boston.

Personally appeared before me, James W. Chapman, a Notary Public in and for the aforesaid county and state, the within named W. H. Hardy, President of the Gulf & Ship Island Railroad Company, who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned as his act and deed.

Witness my hand and official seal at the city of Boston, aforesaid, this 29th day of July, 1886.

JAS. W. CHAPMAN, Notary Public.

STATE OF MISSISSIPPI,
Hinds County.

Before me the undersigned authority in and for said county in said state this day personally appeared William Henry, Secretary of the Gulf & Ship Island Railroad Company, and acknowledged that he executed and delivered the within trust deed as Secretary of said company on the date and for the purposes therein mentioned.

Witness my hand and seal officially this the 3rd day of August, A. D., 1886.

W. T. RATCLIFF, Clerk,
RAMSEY WHARTON, D. C.

The deed of trust of which the next foregoing is a true copy was filed for record on the 21st day of August, 1886, at 3 o'clock P. M., and duly recorded this the 24th day of August, 1886.

W. P. LOWRY, Clerk.
By J. D. JOHNSON, D. C.

THE STATE OF MISSISSIPPI,
Pontotoc County.

I, W. T. Furr, Clerk of the Chancery Court in and for said county and state, do hereby certify that the above and foregoing one and a quarter pages contain a full, true, perfect and complete copy of deed of trust executed by the Gulf & Ship Island Railroad Company to W. C. Falkner on the 28th day of July, 1886, as the same appears of record in my office, in Record Book No. 44, pages 208, 209 and 210.

Given under my hand and seal of said court affixed this 30th day of April, 1904.

W. T. FURR, Clerk.

Affidavit of D. H. Hall.

CHANCERY COURT, PONTOTOC COUNTY.

No. 1581.

THE STATE OF MISSISSIPPI,
Union County.

State of Mississippi
vs.
Mobile, Jackson & Kansas City Railroad Company.

Personally appeared before me, C. S. Cullens, Clerk of the Chancery Court in and for said county, D. H. Hall, who after being duly sworn, says: That he has been located near the Gulf being duly sworn, says: That he has located near the Gulf & Chicago Railway Company, south of the town of Pontotoc, two saw mill plants, one near Algomar, a depot on said road, and the other at Houlka, another depot on said road; that he has employed something over one hundred men in the operation and running of said plants; that said plants were located and in operation long before the injunction in this case was sued out, and that he has a large quantity of lumber on hand, and has made contracts and accepted bill therefor, and that he is ready to ship

said lumber to his customers, but on account of the injunction can ship no lumber; besides these bills for immediate shipment, I have contracted for this season's delivery one million feet of export stuff, that the continuation of said injunction works an irreparable injury to my business and to my said manufacturing plants, and to the public at large.

D. H. HALL.

Sworn to and subscribed before me this 13th day of April, 1905. C. S. CULLENS, Chancery Clerk.

CHANCERY COURT.

No. 1581.

THE STATE OF MISSISSIPPI,
Pontotoc County.

State of Mississippi

vs.

Mobile, Jackson & Kansas City Railroad Company.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for said county, W. R. Pegues, W. C. Pittman, W. A. Weatherall, Will H. Wood, who after being first severally duly sworn, say: That they are merchants doing business in the town of Pontotoc, and that the new depot on the Gulf & Chicago Railway in the town of Pontotoc, had been located, the grounds graded, the railroad track and switches were laid and completed, and the new depot building was in process of erection, and nearly completed, before the injunction in this cause was sued out; and said affiants further severally make oath that the charges for drayage was the same from the new depot as it was from the old until the roads to the new depot became bad from excessive rain and freezes, the work on said road to the new depot having been done by the town of Pontotoc a very short while before the rains and freezing weather set in; the work on said roads consisted of a high embankment of loose and unsettled dirt.

W. R. PEGUES,
W. C. PITTMAN,
W. A. WEATHERALL,
WILL H. WOOD.

Sworn to and subscribed before me this 10th day of April, 1905.

W. T. FURR, Chancery Clerk.
By W. J. LYON, D. C.

Affidavit of C. Neal.

CHANCERY COURT.
No. 1581.

THE STATE OF MISSISSIPPI,
Pontotoc County.

State of Mississippi, et al.,
vs.
Mobile, Jackson & Kansas City Railroad Company.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for said county, C. Neal, who after being first duly sworn, says: That he is in the employ of Gulf City Construction Company and that said company is engaged in the construction of said defendant's said railroad, and before the injunction sued out in this cause as he is informed, located and estabilshed its material yard about one and one-quarter miles north of the new depot in the town of Pontotoc, on the line of defendant's said road, where it deposited large quantities of material, consisting of steel rails, cross-ties, and bars, bolts, spikes, switching appliances, and other things, from which point the same were shipped over said road south of the town of Pontotoc, on defendant's cars as the same were needed in the daily work of constructing said road; that after the injunction this was continued under a modification of said injunction and that he has been in charge of said yard since November 1st, 1904. And affiant further makes oath that if the remanding of this cause to the state court should operate as a revocation of said modification and restores the injunction as originally granted, it would stop their shipment of material south of the town of Pontotoc for the construction of said road, and force said company to ship the remaining portion of said material in the said material yard, consisting of thirty or forty car loads of steel rails and other material from said material yard as now located back to New Albany, thence over the Frisco road to the Mobile & Ohio road at Tupelo, thence down said road to Okolona, thence to Houston,

or down the Mobile & Ohio road to West Point, over the Southern road to Macon or over the I. C. road to Ackerman, at a great expense in freight charges, and repay in transporting same, which causes defendant great damage incident thereto in the delay in construction of said road; and the continuance of said injunction will work an irreparable injury to defendant and interfere with the construction of said road which now has its track laid some distance south of Houston, and the said steel now on hand being sufficient to complete that unfinished portion of said road in the gap between the northern and southern completed points on said line of railroad.

C. NEAL.

Sworn to and subscribed before me this 13th day of April, 1905.

W. T. FURR, Chancery Clerk.

Affidavit of W. F. Austin.

CHANCERY COURT.
No. 1581.

THE STATE OF MISSISSIPPI,
Pontotoc County.

State of Mississippi, et al.,
vs.
Mobile, Jackson & Kansas City Railroad Company.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for said county, W. F. Austin, who after being first duly sworn, says: That he is largely interested in and is manager of a brick manufacturing plant located in the town of Pontotoc on the new line of the Gulf & Chicago Railway Company, and near the new depot on said road; that he having in view the location of said brick manufacturing plant, attended most all of the public meetings held in the town of Pontotoc with reference to the locating of said road and selecting site for depot, at which meetings the officials of the Gulf & Chicago Railway Company were present to discuss with the citizens of said town the location thereof, within the corporate limits of said town, and that at the said meetings which were all largely attended, a great majority of the citizens manifested a perfect willingness upon their part that the new depot should be located and built on its present site; that affiant was induced to locate and erect

his said brick manufacturing plant at its said present site on the new line of the Gulf & Chicago Railway Company and near the new depot on said road by and on account of the action and conduct of the majority of the citizens of said town of Pontotoc in said public meetings assembled; that affiant's sole object in attending said meetings was to ascertain the best and most desirable location for said brick manufacturing plant; that said plant was located and in full operation in the early part of the spring of 1904, and before the injunction in this case was sued out; that he has had numerous applications for large quantities of brick from parties south of Pontotoc to be used in building houses and other purposes, at different depots, and in the country along the line of said road, but owing to the injunction in this case has been unable to make any contract for sale of any brick south of the town of Pontotoc, it being impossible to deliver same for lack of transportation; that said plant was located with a view principally of getting this trade, and said injunction has caused and is causing this plant great and irreparable loss and injury; affiant further makes oath that he is sheriff of Pontotoc county, and that he is familiar with the section of country through which said railroad runs and is completed south of the town of Pontotoc, and that he knows the people residing in said section of country; that on account of said injunction they are denied railroad facilities, and their investments and enterprises are greatly injured and damaged therefrom, and that the continuance of the injunction in this cause will not only cause irreparable injury to the manufacturing enterprises, a number of which have been started and are in operation along the line of said railroad, but to the public.

W. F. AUSTIN.

Sworn to and subscribed before me this 11th day April, 1905.

W. T. FURR, Chancery Clerk.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

UNITED STATES DISTRICT COURT, EASTERN DIVISION.

April Term, 1905.

The State of Mississippi, et al.,

vs.

The Mobile, Jackson & Kansas City Railroad Company.

Affidavits of W. R. Pegues, H. C. Stanford, C. P. DeJournett, B. L. Hyde, and C. W. Bolton, taken by consent before W. T. Furr, Clerk of the Chancery Court of Pontotoc County, to be read, together with certificate of said W. T. Furr, on motion to dissolve injunction in above styled cause.

Affidavit of W. R. Pegues.

THE STATE OF MISSISSIPPI, Pontotoc County.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for Pontotoc County, W. R. Pegues, who after being duly sworn, says: That he is forty-nine years of age and has been living and conducting a mercantile business in the town of Pontotoc for fifteen years; that he knows where the western boundary line of the Original Plan of the town of Pontotoc is located; that the old depot of the narrow gauge Gulf & Chicago Railroad is not and never was in the Original Plan of the town of Pontotoc, nor is any part of the line of said narrow gauge railroad now or ever was in the original plan of the town of Pontotoc, but that the said line of said railroad within the corporate limits of the said town of Pontotoc was located upon and ran through the additions to the said town of Section 32 in Township 9 of Range 3, East, and on the north half of Section 5 in Township 10 of Range 3, East; that the old depot was located and built on lot No. 40 in the addition to the town of Pontotoc, on the north half of Section 5, Township 10, Range 3, East; that the present or new depot is located on lot No. 7 in said addition to the town of Pontotoc, on the north half of Section 5, Township 10, Range 3, East, and is within the corporate limits of the town of Pontotoc, and was within the corporate limits of said town when said depot was located thereon; that affiant does not believe it possible to provide right of way and standard depot grounds within the original plan of the town of Pontotoc.

W. R. PEGUES.

Sworn to and subscribed before me this 29th day of March, 1905.

W. T. FURR, Chancery Clerk.

Affidavit of H. C. Stanford.

STATE OF MISSISSIPPI, Pontotoc County.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for Pontotoc County, H. C. Stanford, who after first being duly sworn, says: That he is sixty years of age and has resided in the town of Pontotoc seventeen years; that he resides on lot No. 40, in the addition to the town of Pontotoc, on the north half of Section 5, in Township 10 of Range 3, East, and that the old depot on the narrow gauge Gulf & Chicago Railroad was located on lot No. 4; that his dwelling house is located on the said lot southeast of the said old depot, and between the old depot and the line of the said Gulf & Chicago narrow gauge railroad and the western boundary line of the original plan of the town of Pontotoc; that the old depot is not now and never was within the original plan of the town of Pontotoc, nor is or was any part of the said line of the said narrow gauge railroad ever within said original plan of the town of Pontotoc; that the present or new depot is within the corporate limits of the town of Pontotoc, and was within said corporate limits at the time of its location, being located on lot No. 7, in said addition to the town of Pontotoc on the north half of Section 5 in Township 10 of Range 3, East; that he was formerly section foreman and road-master for the said Gulf & Chicago narrow gauge railroad and that he is thoroughly familiar with its said line of railroad; that said affiant does not believe it possible to provide right of way and standard depot grounds within the original plan of the town of Pontotoc.

H. C. STANFORD.

Sworn to and subscribed before me this 29th day of March, 1905.

W. T. FURR, Chancery Clerk.

Affidavit of C. P. DeJournett.

STATE OF MISSISSIPPI, Pontotoc County.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for Pontotoc County, C. P. DeJournett, who after being first duly sworn, says: That he is sixty years of age and has resided in the town of Pontotoc for eighteen years; that the line of the narrow gauge Gulf & Chicago Railroad runs

through the southwest corner of lot No. 21, in the corporate limits of the town of Pontotoc, and that said lot 21 is located in the addition to the town of Pontotoc on the north half of Section 5 in Township 10 of Range 3, East; that he owned all of said lot except that part through which said railroad ran, except a small portion and betewen said line of railroad and the original plan of the town of Pontotoc; that the old depot on said narrow gauge line is located on lot No. 40 in the addition of the town of Pontotoc on the north half of Section 5 in Township 10 of Range 3, East, which said lot is immediately south of lot 21, with Coffee Street between; that the old depot is not now and never was in the original plan of the town of Pontotoc, nor is or was any part of the line of the said Gulf & Chicago Railroad ever in said original plan of the town of Pontotoc; that the present or new depot is located on lot No. 7 within the corporate limits of the town of Pontotoc, and in said addition, to said town on the north half of Section 5 in Township 10 of Range 3, East, and that said lot was within the corporate limits of said town of Pontotoc when said depot was located thereon; that said affiant does not believe it possible to provide right of way and standard depot grounds within the original plan of the town of Pontotoc.

C. P. DeJournett.

Sworn to and subscribed before me this 29th day of March, 1905.

W. T. Furr, Chancery Clerk.

Affidavit of B. L. Hyde.

State of Mississippi, Pontotoc County.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for Pontotoc County, B. L. Hyde, who after being first duly sworn says: That he is thirty-four years of age and has been living in the town of Pontotoc seven years; that he knows where the western boundary line of the original plan of the town of Pontotoc is located from having seen it surveyed and measured off during the year 1901; that the old depot of the narrow gauge Gulf & Chicago railroad is west of and is not and never was in the original plan of the town of Pontotoc, nor is or was any part of the said narrow gauge railroad ever in the original plan of the town of Pontotoc, but that the said

line of the said railroad within the corporate limits of said town was located upon and ran through the additions to said town on Section 32 in Township 9 of Range 3, East, and on the north half of Section 5 in township 10 of Range 3, East. and that the old depot was located and built on lot No. 40 in the said addition to the town of Pontotoc on the north half of Section 5, Township 10, Range 3, East; that the present or new depot on lot 7 in the said addition to the town of Pontotoc on the north half of Section 5, Township 10, Range 3, East, and is within the corporate limits of the said town of Pontotoc, and was within the corporate limits of said town when said depot was located; that said affiant does not believe it possible to provide right of way and standard depot grounds within the original plan of the town of Pontotoc.

B. L. HYDE.

Sworn to and subscribed before me this 29th day of March, 1905.

W. T. FURR, Chancery Clerk.

Affidavit of C. W. Bolton.

STATE OF MISSISSIPPI, Pontotoc County.

Personally appeared before me, W. T. Furr, Clerk of the Chancery Court in and for Pontotoc County, C. W. Bolton, who after being first duly sworn, says: That he is forty-eight years of age, was born in the county of Pontotoc, and has lived in said county all of his life, and in the town of Pontotoc since 1874; that he was one of the citizens of the town of Pontotoc who contributed to raise the sum of $5,500 for the Gulf & Chicago Railroad and he subscribed the sum of $25 thereto and hereunto annex the note he gave therefor, which is similar to the notes given by other parties, having been printed for that purpose, and makes the same "Exhibit A" with this his affidavit; that he subscribed said sum solely for the purpose of getting the road to the town, and nothing was said whatever with reference to location of depot until after the whole amount of $5,500 was subscribed, and the engineer had run several surveys, and when it was located several citizens of the said town were very much dissatisfied with the location, and it was openly charged on the streets of the town of Pontotoc that the engineer was bribed to make the location; that Col. Falkner declined to have anything to do with locating

the depot, but prepared to leave its location to the citizens of said town, if his engineer reported favorably as to the location; that if the depot had been located before the subscription was raised affiant believes that a number of the subscribers would not have subscribed toward the fund; that affiant knows where the western boundary line of the original p'an of the town of Pontotoc is located; that the old depot of the narrow gauge Gulf & Chicago Railroad is not and never was in the original plan of the town of Pontotoc, nor is any part of the line of said narrow gauge railroad now or ever was in the original plan of the town of Pontotoc, but the said line of said railroad within the corporate limits of said town of Pontotoc was located upon and ran through the addition to said town on Section 32 in Township 9 of Range 3, East, and on the north half of Section 5, Township 10, Range 3, East; that the old depot was located and built on lot 40 in the addition to the town of Pontotoc, on the north half of Section 5, Township 10, Range 3, East; that the present or new depot is located and built on lot No. 7, in said addition to the town of Pontotoc, on the north half of Section 5, Township 10, Range 3, East, and is within the corporate limits of the town of Pontotoc, and was within the corporate limits of said town when said depot was located thereon; that the said affiant does not believe it possible to provide right of way and standard depot grounds within the original plan of the town of Pontotoc.

C. W. BOLTON.

Sworn to and subscribed before me this 29th day of March, 1905.

W. T. FURR, Chancery Clerk.

EXHIBIT "A."

$25.00. Pontotoc, Miss., April 12th, 1886.

On or before the 1st day of December, 1886, I promise to pay R. P. Brown, Treasurer, etc., or bearer, the sum of Twenty-Five Dollars for value received, with interest at the rate of six per cent. per annum.

C. W. BOLTON.

Received on the within note Five Dollars, by 1 pair scales by Mr. Armor. R. P. BROWN, Treas., etc.

Paid, $21.20, R. P. Brown, Treasurer, Jan. 29th, 1887.

EXHIBIT "B."

J. W. BELL to GULF & SHIP ISLAND RAILROAD COMPANY.

THE STATE OF MISSISSIPPI,

Pontotoc County.

In consideration of the benefits to accrue to me by the building of the Gulf & Ship Island Railroad, and the sum of One Dollar to me paid, the receipt of which is hereby acknowledged, I convey to the Gulf & Ship Island Railroad Company, the land described as follows: A strip of land one hundred feet wide to be laid off as to measure fifty feet on each side from the center of the track through lots 22 and 19, on the north half, Sec. 5, T. 10, R. 3, E.; also a piece of land described as follows: Beginning at the S. W. corner lot 21, running north 60 feet, thence east 120 feet, thense south 60 feet, thence west with street to beginning, on north half, Sec. 5, T. 10, R. 3, E., in tov n of Pontotoc, in said county and state, the same being for the right of way, switches, tracks, depot grounds and other railroad purposes.

In testimony whereof I hereto set my hand this the 8th day of June, 1886.

J. W. BELL.

THE STATE OF MISSISSIPPI,

Pontotoc County.

This day personaly came before N. W. Bradford, a Justice of the Peace in and for said county, the above named J. W. Bell, who acknowledged that he signed and delivered the foregoing deed on the day of the date thereof and for the purposes therein set forth.

In testimony whereof I hereto set my hand and seal this the 8th day of June, A. D., 1886.

[SEAL] N. W. BRADFORD, J. P.

The deed of which the next foregoing is a true copy was filed for record at 3 o'clock P. M., the 9th day of June, 1886, and duly recorded the 17th day of June, 1896.

J. M. NISBET, Clerk.

EXHIBIT "C"

Deed.

P. McCORMICK to GULF & SHIP ISLAND RAILROAD COMPANY.

THE STATE OF MISSISSIPPI,
Pontotoc County.

In consideration of the benefits to accrue to me by the building of the Gulf & Ship Island Railroad and the sum of One Dollar to me paid, the receipt of which is hereby acknowledged, I convey and warrant to the Gulf & Ship Island Railroad Company the land described as follows: A part of lots Nos. 39 and 40, in the north half of Sec. 5, T. 10, R. 3, East, town of Pontotoc, Miss., commencing at N. W. corner of said lot 39, west 90 feet, south 60 feet, east 300 feet, north 60 feet to the northern boundary line of said lot No. 40, thence west 210 feet to commencing corner; also right of way through lot No. 40, 50 feet on each side of track, the same being for right of way, switches, side tracks, depot grounds and other railroad purposes; I also sell to the said railroad company the right to take and use any earth, stone, gravel or timber needed in the construction of said road which may be on the land described as follows:

In testimony whereof I hereto set my hand this the 3rd day of May, A. D., 1886.

P. McCORMICK.

THE STATE OF MISSISSIPPI,
Pontotoc County.

This day personally came before me, W. P. Lowery, Chancery Clerk in and for said county, the above named P. McCormick, who acknowledged that he signed and delivered the foregoing deed in the day of the date thereof and for the purposes therein set forth.

In testimony whereof I hereto set my hand and seal this the 3rd day of May, A. D., 1886.

W. P. LOWERY, Clerk. [SEAL]

The deed of which the next foregoing is a true copy was filed for record on the 20th day of May, 1886, at 9 o'clock A. M., and duly recorded on the 25th day of May, 1886.

W. P. LOWERY, Clerk.

EXHIBIT "D."

Deed.

THE STATE OF MISSISSIPPI,
Pontotoc County.

R. W. FLOURNOY to GULF & SHIP ISLAND RAILROAD CO.

In consideration of the benefits to accrue to me by the building of the Gulf & Ship Island Railroad, and for the sum of One Dollar to me paid, the receipt of which is hereby acknowledged, I convey and warrant to the Gulf & Ship Island Railroad Company the land described as follows: A strip of land one hundred feet wide to be measured fifty feet from the center of railroad track on each side through lots Nos. 2, 3, 18 and 19, being part or north half, Sec. 5, T. 10, R. 3, East, in the town of Pontotoc, State of Mississippi, the same being for right of way, switches, side tracks, depot grounds and other railroad purposes.

In testimony whereof I hereto set my hand this the 3rd day of May, 1886.

R. W. FLOURNOY.

THE STATE OF MISSISSIPPI,
Pontotoc County.

This day personally came before me, W. P. Lowery, a Chancery Clerk in and for said county, the above named R. W. Flournoy, who acknowledged that he signed and delivered the foregoing deed on the day of the date thereof, and for the purposes therein set forth. In testimony whereof I hereto set my hand and seal this the 3rd day of May, A. D., 1886.

W. P. LOWERY, Clerk.

CERTIFICATE OF W. T. FURR.

I, W. T. Furr, Clerk of the Chancery Court in and for the county of Pontotoc, and custodian of the records of deeds in and for said county, do hereby certify that the three deeds hereto annexed, executed by P. McCormick, J. W. Bell and R. W. Flournoy, marked "Exhibits A, B, and C," are true, full and complete copies of the deeds executed by said grantors, conveying right of way, switching and depot grounds to the old G. & S. I. Railway Company, as the same appears of record in my office; I further certify that there are no other deeds conveying switching and depot grounds to the said railway company, or to the Gulf &

Chicago Railway Company of record in my office.

I do further certify that I have diligently searched the records of deeds for the original plan of the town of Pontotoc, and there is nowhere in said records the record of any deed conveying to said Railway Company or the Gulf & Chicago Railway Company any land for any purpose whatever in said original plan of the town of Pontotoc; and I do further certify that the blue print map of the original plan and the supplemental plan of the town of Pontotoc, together with additions thereto, which is hereto attached, marked "Exhibit D," is a true, full ,perfect and complete copy of the map of the original plan and the supplemental plan of the town of Pontotoc and the additions thereto, now on file in my office and a record therein, as the same appears from the records in my office.

Given under my hand and seal of said court affixed at my office this 29th day of March, 1905.

W. T. FURR, Chancery Clerk.

Filed April 1st, 1905.

W. T. FURR, Clerk.

MOTION TO DISSOLVE INJUNCTION.

No. 1581.

THE STATE OF MISSISSIPPI,
Pontotoc County.

CHANCERY COURT.

State of Mississippi, et al.,
vs.
Mobile, Jackson & Kansas City Railroad Company.

Defendants by solicitors move the Court to dissolve the Injunction hertofore granted in this cause on Bill and Answer, for the following reasons, to-wit:

1. Because all of the material allegations of the Bill are denied by the answer.

2. Because the said Injunction issued upon the prayer of the Bill in this cause imposes a direct and unnecessary burden upon, and is an interference with interstate commerce.

3. Because the Injunction issued upon the payer of said Bill is an interference with the carrying of the United States mail.

4. Because by said Bill and Injunction thereon, defendant's railway companies are prohibiting from building their line of road outside the original town of Pontotoc, and within the three miles of said town without furnishing said defendants right of way through said town and sufficient grounds for ordinary depot purposes within said original town, or offering to do so.

5. Because said defendants are in no default in building their said road outside said original plan of the town of Pontotoc.

6. Because the relief sought in this cause is entirely inconsistent with complainants, the Railroad Commission, said order heretofore issued as aforesaid, and is in direct conflict therewith.

7. Because no constitutional nor statutory law has been violated by defendants, nor is any constitutional or statutory law sought to be construed, but an arbitrary effort on the part of complainants to require defendants to locate its line of road and depot at a point designated by complainant.

8. Because said Injunction works an irreparable injury to defendants and the general public and no injury to complainants.

9. Because there is no equity on the face of the bill.

J. D. FONTAINE,
J. W. T. FALKNER.

DECREE DISSOLVING INJUNCTION.

The State of Mississippi, et al.,
vs.
Mobile, Jackson & Kansas City Railroad Company, et al.

This day came on to be heard and was heard by agreement of counsel the defendants' motion to dissolve the temporary injunction heretofore granted in said cause for the reasons set out in the motion on file and the Chancellor after hearing the evidence offered by both sides and the argument of counsel, doth find that all of the relief prayed by complainants in their bill can be obtained by a mandatory injunction, if the allegations thereof shall be sustained on a final hearing of the case, and the Court shall then hold that they are entitled to any relief, or to

the special relief asked in the prayer of the bill; and the Court doth further find that the public interest of the country north and south of the town of Pontotoc, along the line of said railroad as well as the interest of the railroad will suffer by reason of the continuance of the temporary injunction and for these reasons the motion to dissolve the injunction is hereby sustained, reserving all other questions until the final hearing; thereupon the complainants having prayed for an appeal to the Supreme Court with supersedeas; and it appearing to the Court that an appeal with supsedereas is proper to settle the principles of the cause and expenses and delay; it is further ordered that said appeal be granted with supersedeas and without bond and such appeal shall be taken within ten days from this date;

Ordered, further, on such appeal the original maps and exhibits used on both sides on the motion be made a part of the record and considered by the Court as such.

Ordered, adjudged and decreed in vacation, this 14th day of April, 1905.

W. J. LAMB, Chancellor.

Filed, April 15, 1905.

W. T. FURR, Chancery Clerk.

PETITION FOR APPEAL.

STATE OF MISSISSIPPI, PONTOTOC COUNTY.
CHANCERY COURT.
April 18th, 1905.
The State of Mississippi, et al.,
vs.
The Mobile, Jackson & Kansas City Railroad Company, et al.

PETITION FOR APPEAL.

TO THE CHANCERY COURT OF PONTOTOC COUNTY:

Complainants in the above styled cause, by solicitors, respectfully represent and show that on the 14th day of April, 1905, the injunction in the above styled cause was by the said Chancery Court dissolved on motion of defendant and that an appeal has been allowed with supersedeas from the decree of the said court so dissolving the said injunction, as shown by the decree entered in said cause; therefore, complainants, feeling themselves aggrieved by said decree, respectfully pray an appeal

from said decree so dissolving the said injunction to the Supreme Court of the State of Mississippi and ask that the record in said cause be made up and filed in the said Supreme Court.

And in duty bound, complainants will ever pray, etc.

WILLIAM WILLIAMS, Att'y. Gen'l.

MITCHELL & FLETCHER, of Counsel,
Solicitors for Complainants.

Filed, April 18th, 1905.

W. T. FURR, Clerk.
By W. J. LYON, D. C.

CERTIFICATE OF CLERK TO RECORD.

THE STATE OF MISSISSIPPI,
County of Pontotoc.

I, W. T. Furr, Clerk of the Chancery Court in and for said county and state, do hereby certify that the foregoing one hundred and sixty-two pages contain a true, perfect, full and complete copy of all the papers and proceedings had and done in the case of the State of Mississippi, et al., vs. The Mobile, Jackson & Kansas City Railroad Company, et al., numbered 1581, as the same appears of record and on file in my office, except Original Maps and Exhibits, which is put in as a part of this record, as per order of decree made and entered the 14th day of April 1905, in our said Chancery Court, in vacation.

Given under my hand and seal of office at Pontotoc, this the 15th day of May, 1905.

W. T. FURR, Chancery Clerk.

DECREE OF SUPREME COURT.

No. 11,802.
MONDAY, June 26th, 1905.

Railroad Commission of the State of Mississippi
vs.
Mobile, Jackson & Kansas City Railroad Company.

This cause having been submitted on a former day of this

term of on the record herein from the Chancery Court of Pontotoc County and the Court having sufficiently examined and considered the same and being of opinion that there is error therein doth order adjudge and decree that the decree of said Chancery Court rendered in this cause on the 14th day of April, A. D., 1905, be and the same is hereby reversed and the injunction reinstated and the cause remanded; and that the appellee do pay the costs of this appeal to be taxed, etc.

OPINION OF THE COURT.

TRULY, J.

This appeal is prosecuted from a decree dissolving an injunction.

The bill of complaint filed by the appellants sought to enjoin the Gulf & Chicago Railway Company, the successor by consolidation of the Gulf & Chicago Railway Company and the Mobile, Jackson & Kansas City Railroad Company, as the lessee of the Gulf & Chicago Railway Company, the consolidated corporations, from constructing and operating its line of railway without passing through the town of Pontotoc, the county site of Pontotoc county in this State, as required by Section 187 of the Constitution, and sought also to prevent the appellees from abandoning a portion of the railroad formerly operated by the Gulf & Chicago Railroad Company, which ran to, and upon which had previously been maintained a depot at the town of Pontotoc.

The prayer of the bill of complaint was that an injunction should issue against the said railroad companies, who were made defendants, "temporarily restraining them and each of them from constructing and operating the said proposed line of railroad passing within three miles of the said county site without passing through the same and upon final hearing that they be perpetually enjoined from building and operating a railroad along said route and commanding them to broaden and standardize the said line of railroad extending into the said county seat of Pontotoc county, as it has been established for years, and as the said consolidated corporation agreed to do from the point north of the said county seat from which said narrow gauge line has been abandoned and that the said defendants be required to operate the said line into the said county seat

as a part of the line built and to be built from Decatur, Mississippi, to Jackson, Tennessee, and that they be commanded to extend the line on through the said county seat as required by said Sec. 187 of the Constitution of the State of Mississippi, and as required by law and by the order of the complainant, the Mississippi Railroad Commission," This bill was filed and injunction issued on the 2d day of August, 1904. Answer was duly filed, motion to dissolve on bill answer and proof was heard; the injunction was dissolved, and from that ruling of the Chancellor, this appeal is prosecuted in order "to settle the principles of the cause."

For many years prior to the institution of this suit, the Gulf & Chicago Railroad Company had operated a line of narrow gauge railrood from the town of Pontotoc, in the State of Mississippi, to the town of Middleton, in the State of Tennessee. That road ran in a northerly direction, traversing a portion of the county of Pontotoc and the counties of Union and Tippah, crossing the State line at or near the town of Broomfield, in the county of Tippah. This road was in active operation carrying both freight and passengers at the date of the incorporation under the laws of this State, of the Gulf & Chicago Railway Company. This latter road, by proclamation of the Governor, was, in due form incorporated on the 17th day of April, 1903, and the incorporators were by such authorization empowered "to organize a railroad company with the terminal points of said road at Decatur in the State of Mississippi and Jackson, in the State of Tennessee; the said line of railroad to extend in northerly direction from the town of Decatur, in the County of Newton, passing through the counties of Neshoba, Winston, Choctaw, Webster, Chickasaw, Pontotoc, Union and Tippah into the State of Tennessee, crossing the state line at or near the town of Broomfield, in the county of Tippah." Subsequently an application was made to the Railroad Commission of the State of Mississippi asking for its consent and approval to the consolidation of the Gulf & Chicago Railway Company, a Mississippi corporation, the Gulf & Chicago Railway Company, a Tennessee corporation, and the Gulf & Chicago Railway Company, a corporation existing under the laws of both states. In this petition for permission to consolidate, it was averred that "the lines of railroad owned, operated and con

trolled and projected by the constituent companies composing said consolidation, were and are in no way parallel or competing lines. On the contrary the consolidation was effected for the single purpose of furthering the general plan of upbuilding and equipping, and thereafter operating a single track standard gauge line of railroad extending in a general northerly direction from the town of Decatur, Miss., to the City of Jackson, Tennessee. The present constructed narrow gauge railroad acquired from the Gulf & Chicago Railway Company, and running between the town of Pontotoc, Mississippi, and Middleton, Tennessee, will be broadened and standardized, and will thereupon become a part of the line of railroad operated by the consolidated corporation." Acting on this representation, the Commission passed an order permitting and approving the proposed consolidation of the corporations. The order reciting that "it appearing to the satisfaction of the Commission that said corporations do not own or operate parallel or competing lines of railroad." After the consolidation was consummated in pursuance of this permission, the Gulf & Chicago Railway Company, the corporation resulting from the consolidation, leased the entire property, including the narrow gauge railroad which it had acquired from the Gulf & Chicago Railway Company to the Mobile, Jackson & Kansas City Railroad Company. Thereupon the said lessee began the construction of line of railroad over the route mapped out by the charter of its lessor, from Decatur, Miss., to Jackson, Tennessee. When this line approached, but before actually reaching the town of Pontotoc from the north, it diverged from the line of narrow gauge railroad which was then in actual operation, abandoning a mile or more of that line with the intention of following another, and according to the testimony of its locating engineer, a cheaper and more feasible route. This projected line as surveyed left the original town of Pontotoc over a mile distant, but traversed an extension of said town, and located a depot on the new route, three-fourths of a mile distant from the site of the old depot, but still within the corporate limits of the town, as they then existed. When it became manifest that the intention of the railroad company was to abandon this portion of the narrow gauge line, and that its new line, while passing within three miles of the original town of Pontotoc, would not pass through its corporate limits, this proceeding

was instituted by the appellants, praying for an injunction, which was granted, forbidding the construction of the new road over the projected route, and further asking that on final hearing a mandatory injunction would be issued, compelling the broadening and standardizing of the narrow gauge line as set forth in the petition for consolidation, and forbidding the abandonment of any portion thereof. Upon the hearing of the motion to dissolve much proof was taken tending to establish on the one hand, that the location of the depot upon the original site on the narrow gauge line of the Gulf & Chicago Railway Company at the town of Pontotoc (which had been destroyed by fire, and not rebuilt, in flagrant disregard and defiance of the order of the Railroad Commission, was in pursuance of a written contract entered into between the citizens of the town and the chief officials of the railroad company at that date, by which, in consideration of $5500 cash in hand, paid by the citizens the depot was located on the site then selected and was under the provisions of that contract, to be there perpetually maintained. It was also in proof, that the removal of the depot from the old site to the new location selected, on the new route, would have the effect of materially decreasing the value of all adjacent property, and of increasing considerably, the cost of drayage and hauling of freight both to and from the newly selected site for the depot and the original town of Pontotoc, where the majority of the mercantile establishments and other business enterprises were situated. It was shown by the testimony of engineers, that a perfectly practicable route without undue curves or unusual engineering difficulties, could be laid out for the building of a standard gauge railroad which would run over the entire narrow gauge roadway, and thence extended traverse the corporate limits of the old or original town of Pontotoc, and come again to the new route as located by the railroad engineering corps at a point a short distance south of the town, and that such line would increase the length of the line by less than a mile, and necessitate but a slight deviation from the projected route. On the other hand it was shown, also by the testimony of the engineers, that it would cost many dollars more to adopt the route then occupied by the narrow gauge line, than it would to use the more direct route located for the construction of the road, and that the latter line would be cheaper to build,

would be more direct, and would present fewer engineering difficulties. It was further contended, that there were no sufficient or suitable grounds available for depot site, with sufficient and adequate trackage room for a standard gauge road within the borders of the original town of Pontotoc. That there was no contract requiring the maintainance of the depot at the original location, and if there were such a contract it would be void as a violation of public policy. That the petition for permission to consolidate imposed no burden of maintaining the entire narrow gauge road, that the Mobile, Jackson & Kansas City Railroad Company had the authority to make all necessary or proper changes in its course or direction even if such change or deviation resulted in the abandonment of the existing narrow gauge road. It is worthy of note, however, that the chief engineer stated that in selecting the route over which the road was to be constructed, it was done with an eye single to the advantage of the railroad company and without regard to the convenience of the citizens of the original town of Pontotoc that he was, in finally locating this line, ignorant of and uninfluenced by the contention that there was an agreement alleged to be in existence, for the perpetual maintenance of the depot as originally located, and without regard and in ignorance of the fact that the petition for consolidation, stated that the existing narrow gauge line was to be broadened and standardized. In short, it appeared from this testimony, that while the railroad company was desirous of conserving the public welfare, assisting in building up the business interests and enlisting the friendly feeling of the citizens and thereby secure their co-operation and patronage, that all of these considerations were subordinate to the controlling and paramount object which was to secure for the company the cheapest, most direct and most practicable route. It was also contended, and this was made the main ground of the motion to dissolve, that citizens living both north and south of the town of Pontotoc on the projected route of the railroad, were damaged and inconvenienced by the enforced delay in the construction of the road and were deprived of freight, mail and passenger facilities, which would come to them by the operation of the road upon completion.

The decree of the Chancellor was predicated upon this

last consideration alone. The decree recites that the Chancellor "doth find that all of the relief prayed by complainants in their bill can be obtained by a mandatory injunction if the allegations thereof shall be sustained on a final hearing of the case, and the court shall then hold that they are entitled to any relief, or to the special relief asked in the prayer of the bill; and the court doth further find that the public interest of the country north and south of the town of Pontotoc along the line of said railroad, as well as the interests of the railroad, will suffer by reason of the continuance of the temporary injunction, and for these reasons the motion to dissolve the injunction is hereby sustained, reserving all other questions until the final hearing." It will thus be noted that the Chancellor announced no conclusion upon facts, but based his decree solely upon the ground that conceding the justice of complainants' cause, they could still allow the work or construction to progress and obtain that relief by mandatory injunction upon final hearing. This decree, therefore, does not come before us and is not to be considered in the light of the rule which requires the findings of a Chancellor upon a question of fact to be sustained, unless manifestly wrong, because the decree affirmatively shows that the Chancellor reserved his ruling upon all questions of fact and remitted the parties litigant to this court for an adjudication to settle the principles of the cause and to serve as a guide during the future progress of the litigation.

Waiving minor considerations, not sufficiently developed by the proof, as the record now stands, to enable us to reach a definite conclusion; such, for example, as what are the subsisting legal rights and obligations arising under the alleged written contract as to the original location of the depot, and all others which were not necessarily involved in the decision of the main propositions controlling the questions here presented, and passing at once to the very heart of the matter here presented, we find that the case naturally divides itself into two main branches: 1. What is the true interpretation to be given Sec. 187 of our Constitution and has it any application to the facts of this litigation; 2. What are the legal rights of the citizens of the town of Pontotoc and the duties of the appellees as to the narrow gauge road which was in use and active operation before and at the consolidation hereinbefore referred to and at the date of the leasing of its property by one appellee to the other.

Section 187 provides that "no railroad hereafter constructed in this State shall pass within three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles; provided, such town or its citizens shall grant the right of way through its limits and sufficient grounds for ordinary depot purposes." The contention of the appellants is that the term "county seat" used in this section, is to be given the meaning of that piece or parcel of ground within the confines of which, under the law, the public buildings of the county are to be located; that the framers of the Constitution meant to require every railroad company constructing a road under the conditions set out in the section, to run its line through the limits and establish and maintain a depot within the borders of the county site as it was originally established by the legislature. So it is contended that an extension of the limits of the municipality at and within which the county site is located, does not extend the limits of the county site itself, but that those boundaries remain as they were at the date when the place was designated by lawful authority as the seat of justice of the county. And this being true, it is urged that an extension of the limits of the municipality would not affect or vary the duty of a railroad company desiring to construct and project a line passing within three miles of said original county site.

We do not deem it necessary to enter upon any discussion of the argument which forms the basis of this contention. Nor do we feel called on to intimate any opinion as to whether an extension of the corporate limits of a municipality within which is located the seat of the justice of a county, does, or does not, extend the borders within which the public buildings may be located. However, that may be in interpreting the organic law of the state, we must bear in mind the fundamental rule of constitutional construction. A Constitution is framed for the guidance and government of the whole people, and words used therein, are to be given the usual and popular significance and meaning, and unless that be the manifest intention of the framers of the instrument, phrases or terms susceptible of two different interpretations, are not usually to be given a restricted, narrow or technical construction. We are, therefore, of the opinion, that it was the design and intention of the framers of our Constitution to require simply that railroads thereafter

constructed, whose routes should pass within three miles of the town at which, by law, the county site was located, should pass through the corporate limits of the municipality and establish and maintain a depot therein. One great evil which was sought to be guarded against by this constitutional mandate being that companies organized for the real or ostensible purpose of constructing railroads would often extort large grants and donations of lands, money or bonds, from towns or their citizens by the threat of locating the projected line of railroad just beyond the confines of the town, and there establishing a depot and building up a rival market, having the advantage of railroad transportation and cheaper freight rates, against which the inland town, under the inexorable laws of commerce, could not hope to successfully contend. It being a matter of familiar knowledge that the location of a railroad within a short distance of a town not possessing similar or adequate transportation facilities, necessarily and inevitably operates to the great detriment of the financial and business interests of such town. To protect the citizens of such towns from future unwise or extravagant grants of aid or credit, to railroads, Section 183 of the Constitution was adopted prohibiting the counties or municipal corporations from becoming subscribers to the capital stock of any railroad or from making any appropriation to or lending its credit in aid thereof. Section 187 being adopted to protect county seats against the danger to which we have adverted, arising from the building of railroads near to but not passing through their corporate limits. The reason for the distinction which was made between county seats and other towns being, most probably, that the framers of the Constitution realized that to make the section apply to all towns would inevitably tend to discourage the building of other railroads, and would thus materially retard the development of many sections of the State; hence, the section was restricted in its application to county seats alone. The purpose undoubtedly being to protect the interests of the county, which had expended money in the erection of public buildings, and of citizens who had invested their money at the same place because of the existence of the buildings and the permanent location there of the seat of justice, by securing to such towns and their citizens the facilities and advantages afforded by railroad transportation, and

protecting the property situated in such towns from being depreciated and practically destroyed in value, by the building up of another competing town at the nearest point on the railroad. We hold that the true meaning of Section 187 is, that the burden is imposed upon every railroad company whose road passes within three miles of any county seat, to run through the corporate limits of the town as they exist at the date of the construction of such road and to maintain therein a depot, unless such construction be absolutely prevented, not by increased cost, or greater engineering difficulty, but by "natural obstacles," which cannot reasonably be overcome. An analysis of the wording of the section will demonstrate, we think, the absolute correctness of our conclusion, that "county seat" is therein employed as synonomous with "municipality."

The section provides that the "town or its citizens" shall grant a right of way through "its limits," referring plainly to the "citizens" and "limits" of the entire "town," and not alone to that portion which was first designated as the seat of justice of the county. This view is strengthened when it is noted that a similar construction was seemingly placed on the provision by the Legislature of the State by the enactment of Chapter 12, Acts 1897. That Act was devised to vest municipal authorities "of any municipality which is a county seat" with necessary power to enable the town to comply with the proviso of Section 187 under review, and authorizes them to issue bonds "for the purpose of buying rights of way through or into the limits of such municipality and sufficient grounds for ordinary depot purposes for any railroad company which will build its line through or into such municipality, according to the requirements of Section 187 of the Constitution." Using the terms "county seat" and "municipality" interchangeably. The construction contended for by appellants, if adopted, might, and probably would, often defeat the object of the section. For if "county seat" must be solely applied to the limits of the town as they existed when it became the seat of justice, it would be often practically impossible or financially prohibitory, in this day of high values, in prosperous and growing towns, for the citizens to acquire without ruinous outlay, the right of way and necessary depot grounds within the narrow confines of the original town. Thus the section would become inoperative because of the inability of the town or its citizens, with due regard to business principles

to comply with its expressed proviso.

It must be noted what we have said about the duty of railroad company to build its line through a county seat is conditioned that the town or its citizens, shall grant a right of way through the limits and sufficient grounds for ordinary depot purposes. But a grant presupposes a request. The duty is imposed upon the railroad company of building its line through every county seat, which it passes within three miles of. It can excuse itself for non-performance of this duty in two ways only: By showing that it was prevented by "natural obstacles;" by showing that the town or citizens refused to make the "grant" mentioned in the Constitution. The initiative must be taken by the railroad company. No action is incumbent on the town or its citizens until the railroad company has evidenced an intention of locating its line within three miles of the town and has expressed a desire to receive the grant from the town. The Constitution says to the railroad companies "ask and ye shall receive," or in default thereof, may locate your line where you will, but an asking and a refusal are conditions precedent to the lawful construction of a line within the distance mentioned without passing through each county seat. We make these latter observations to prevent the possibility of misconception of our meaning, and to dispose at the same time of the contention of appellees that they were absolved of all duty in this regard, because they were not tendered a grant of right of way and depot grounds. In view of our conclusion that the building of any railroad, which may be constructed hereafter through any portion of the corporate limits, and the establishment and maintenance of a depot at a convenient and accessible point (selected by mutual adoption under the provisions of the Act of 1897 when the same are applicable) is a compliance with the mandate of Section 187. The observations are of no further material value, save as an announcement of the judicial construction placed on the Constitutional provision. We conclude on this branch of the case that appellees could not lawfully be required to construct the extension of the existing road, or the newly rejected line of road, through what were the corporate limits of the original town of Pontotoc.

Hence, under the facts of this record, appellants are afforded no relief by the language or intendment of Section 187 of the Constitution.

2. The second important inquiry presented for necessary decision, is with reference to the rights and duties of the appellees: first as between themselves; second as between themselves on the one hand and the public, the citizens along the line of railroad, the Railroad Commission of Mississippi, and the State of Mississippi, in its sovereign capacity on the other.

It appears from this record that the line of railroad actually constructed, belonging to and operated by the Gulf & Chicago Railroad Company, traversed the same territory, and followed for its entire length, practically the same route over which the Gulf & Chicago Railway Company was authorized by the proclamation of the Governor, to construct its projected line of road. Had there been no consolidation between these two corporations and had the Gulf & Chicago Railway Company constructed its projected line over the route and in the direction specified in its application for incorporation between the terminal points stated therein, it would inevitably have been both a parallel and competing line with the narrow gauge line then in existence belonging to the Gulf & Chicago Railroad Company, commencing at the town of Pontotoc and running thence in a northerly direction through the counties of Union and Tippah, to the town of Broomfield near the state line, (the place at or near which the projected line was to cross the boundaries of the State) points between which the narrow gauge road is in actual operation the geographical situation is such that the two lines would necessarily have run within a few miles, at most of each other. Had, therefore, the Gulf & Chicago Railway Company constructed its road under the provisions of its charter it could not, without the consent of the Railroad Commission have changed its terminal points, and, however builded if within the grant of power given it by the charter, it would have been such a parallel of competing lines that the consolidation between the two companies would not have been permitted. More than this, even an express grant of power by the legislature, for the two companies consolidate, or for one company "to lease or purchase directly or indirectly, the opposing line, or any part thereof, or any interest therein," would have been void as being in contravention of the general statutory inhabition against consolidation or purchase of competing lines of railroad, which cannot, without violating Section 187 of the Constitution,

be suspended "for the benefit of any individual or private corporation or association."

So. R. R. Co. v. Y. &. M. V. R. R. Co., 83 Miss., 746.

Under the law (Ch. 80, Acts 1898) parallel or competing railroads are forbidden to consolidate, and other railroads are permitted to consolidate only upon the approval of the Railroad Commission of the State. This is the manifest means of Section 3587, Code 1892; the consent of the Railroad Commission is a prerequisite to a valid consolidation between railroads not competing or parallel. It is for the Commission to decide whether the public interest will be prejudiced or subserved by the proposed consolidation to withhold or grant permission accordingly. In the instant case it affirmatively appears from the petition for consent to the consolidation, and from the positive and emphatic testimony of one of the Commissioners (whose energy, interest and zeal we commend) that the chief inducement actuating the Commission in granting its approval of the consolidation, was that the narrow gauge road then in operation between Pontotoc and Broomfield was to be broadened and standardized and become a part of single track, standard gauge, through-line, running between the terminal points stated in the charter, and thus by connections, with the great railway systems of the country, placing that section of the State in touch with the commercial centers of the nation.

The statements in the petition for consolidation that the roads operated or projected by the companies constituting the porposed consolidation were "in no ways parallel or competing," and that the then existing narrow gauge road was to be broadened and standardized and "thereupon become a part of the line of railroad operated by the consolidated corporation" cannot be treated as mere idle averments of incidental matters. They were statements of jurisdictional facts upon the existence of which depended the power of the corporations to consolidate. If the road were competing or parallel they could not consolidate; if the narrow gauge was not broadened and standardized and used as a part of the contemplated through line, it would necessarily remain a competing line. Unless the narrow gauge road can lawfully be abandoned, in whole or in part, the validity of the consolidation is dependent upon the complete per-

formance of the promise of the Gulf & Chicago Railway Company to adopt it as a part of the through line.

Passing for a moment to a consideration of the rights of the public with regard to the narrow gauge line, as it existed prior to and at the time of the consolidation, it is only necessary to refer to the admirable opinion of Woods, J., in Lusby v. Railroad, 73 Miss., 364, show that the railroad company owning that line, was without power to abandon any portion of its line as then in actual operation under the guise of a re-location. The strong and cogent reasoning of that opinion cannot be strengthened or improved, and secure in the unanswerable logic of that admirable and gifted Judge, we content ourselves with a reaffirmance of the conclusions announced in that case.

In that case, after discarding the contention that the corporation had the power "to abandon its original line and begin a new one" at some distance from its then location, the court proceeds: "Unable to consent to any such violent application of the doctrine of implied power in the case supposed, on principle, we must be equally unable to consent to any resort to implied power to relocate, change and reconstruct a single mile, except in the extraordinary cases where imperious necessity requires deviation from the original line in order that the ends of the corporations creation may not perish."

The Gulf & Chicago Railroad Company could not itself, as owner, without violation of its duty to the State of Mississippi, to whose grace it owed its corporate existence, and without disregarding the rights of the citziens along its line, whose property rights had become fixed by the original location of its line abandon or relocate any portion thereof except on the score of "imperious necessity" an exception not suggested by the facts of this record, "having elected to take its original route such election was final and no change from motives of convenience or expediency or economy could be made without another legislative grant authorizing the change."

Lusby v. Railroad Company supra.

It was under the duty of operating its line as then constructed to the town of Pontotoc; it was its duty to maintain

a depot within the confines of that town; it could not abolish or disuse the depot therein established or fail to keep up the same, and to regularly stop the trains thereat, without the consent of the Commission, unless, perhaps, as seemingly intimated in the case of State v. A. & V. R. R. Co., 68 Miss., 653, a change in the site of the depot was imperatively demanded by business necessity or public convenience, and even in the state of case justifying such removal or change of sight, it would have still been the duty of the company to locate the new depot on the line of its established route within the corporate linmits of the town at a site designated by the State Railroad Commission, unless the site selected by the railroad itself should be both convenient and accessible, due regard being had to the interest of the railroad and to the public convenience.

These were the duties of the railroad company owning the narrow gauge line: the consolidation of the two corporations neither decreased the duties of the railroad nor impaired the rights of the public. If, therefore, these duties were devolved by law upon the owner of the road, both before and after consolidation, and if the duty of maintaining and incidentally broadening and stnadardizing the narrow gauge road, then in existence, was recognized and expressly assumed, as manifestly it was in the petition for permission to consolidate, certainly none of these duties were abrogated, but all became likewise obligatory on the lessee of the consolidated corporation. If the original owner of the road could not abandon it, as clearly, under the Lusby case, it could not; if the consolidated corporation which acquired the property could not abandon the road or abolish the depot in the town of Pontotoc, assuredly, by no principle of law can the lessee of the railroad be granted greater rights over the leased property than the owners possessed, or be charged with fewer duties towards the public, or be held to a less strict accountability to the law.

We hold, therefore, on this branch of the case, that it is the duty of the appellees to maintain, use, broaden and standardize the narrow gauge road formerly belonging to the Gulf & Chicago Railroad Company, so that it shall become a part of "the line of railroad operated by the consolidated corporation"

as in their petition for consolidation, the consolidating corporations obligated themselves to make it.

It is contended by the appellees that as a railroad company is granted by Section 3599, Code 1892, the right after the beginning of the construction of its road "to make all necessary or proper changes in its course or direction from that specified in the application for its incorporation; that, therefore, it was within the power of the Mobile, Jackson & Kansas City Railroad Company, to make any desired change during the construction of its road, even though such deviation necessitated the abandonment of some portion of narrow gauge line. Such is not the meaning of the law. Section 3599 is simply intended to enable railroad companies to cope with such unforeseen contingencies as may arise in the actual construction of the projected road after its general course and direction have been mapped out, and approved in the manner pointed out by law. So that the building of a road might not be prevented or its cost unduly increased by some natural obstruction, arising from the character of the soil, the topography of the country or other difficulties which might not be discovered until the work of actual construction began.

But that is not this case. The instant case deals with a road already constructed, equipped and in actual operation, a portion of which is now sought to be abandoned. A railroad co npany has no power to ignore and disregard the rights of the public, growing out of and fixed by the location and establishment of its roads. Nor would the State Railroad Commission have the right to authorize any portion of the road to be abandoned or changed to the detriment or damage of the interest of the citizens who have acquired property and business interests with reference to its original location. Once located, a railroad is permanently located for the whole term of its existence, subject only to the exception of specially granted express legislative enactment authorizing a change or relocation.

If the Gulf & Chicago Railway Company, or its lessee, the Mobile, Jackson & Kansas City Railroad Company shall extend its line from the terminus of the narrow gauge road in the town of Pontotoc and any extension must begin from that point, it may do so over whatever be the most feasible, convenient and desirable route without reference to the corporate

limits of the original town of Pontotoc. Where its new depot shall be located, in what portion of the town is a matter not involved in this litigation and is a question for future discussion between the appellees and the Railroad Commission. But it must be established and maintained, either at the old depot site, or if not bound by lawful and enforcible contract to maintain it at that place, then at a convenient and accessible point within due regard to the interests of the railroad and the public convenience. Should the appellees select a new site which si inconvenient or inaccessible, then the Commission is empowered by Section 4309 to designate the location and enforce obedience to its order.

In the extension of the road, under the facts of the instant case, there is no burden imposed on the citizens of the town of Pontotoc to grant either right of way or grounds for depot purposes. This is not a case of the construction of a new line passing within three miles of a county seat, for this road already runs into the county seat. This is simply an extension of an established line made for the convenience and dictated by the corporate policy of the railroad company; it is vested with ample power under its right of eminent domain to acquire or condemn all lands needed for right of way are necessary depot grounds.

We think it unnecessary to discuss the contention that the State of Mississippi is not a proper party to a suit of this kind. The State is always a proper party to a suit of this kind. The State is always a proper party to a proceeding instituted to protect the rights of the public and to finally terminate a wilfull ignoring of its duties under the statutes of the State, and a persistent violation of its charter powers, by a corporation of a quasi-public nature.

The decree of the Chancellor must be reversed.

It may be true that the convenience of the citizens both north and south of Pontotoc are abridged and curtailed and their enjoyment of railroad facilities postponed by the temporary injunction. It may be true that the business interests of the railroad company may suffer until the line of road is completed, but we cannot on that account, ignore the fact that the citizens of the town of Pontotoc have rights regardless of the alleged contract as to the site of the depot, growing out

of the location of this road which must be protected. Nor can we be oblivious to the further facts that the public policy of the State as defined by the adjudication of this court and as embodied in our statute laws, and being violated, and that the orders of the Railroad Commission, to which these appellees are justly subject, are being disobeyed. We cannot permit wrong to be inflicted on one class of citizens who have rights already acquired and fixed under the law, even though a continuance of the wrong might result in indirect benefit to others. Nor can we allow a violation of the law, and ignoring of the rights of the public, and a defiance of the orders of the Commission to continue, on the plea that an injunction preventing these things may operate prejudicially to the rights of the railroad corporations whose failure to discharge their legal obligations is itself the cause of the damage and the delay.

The decree is **reversed,** the injunction re-instated, the cause **remanded.**

RECORD ON SECOND APPEAL.

Pleas and Proceedings had and done at the regular term of the Supreme Court of Mississippi begun and held in the Court room in the Capitol in the City of Jackson, on the first Monday of November, in the year of our Lord, Nineteen Hundred and Five.

Present: The Honorable Albert H. Whitfield, Chief Justice; and the Honorable Jeff Truly and the Honorable S. S. Calhoon, Associate Justices; George C. Myers, Clerk of said Court in person; and Charles Johnson, Marshal.

Proclamation having been duly made, the Court proceeded to the despatch of business.

Afterwards, on the 20th day of March, Nineteen Hundred and Six, the following record was filed in said Court, in words and figures as follows, to-wit:

AMENDED ANSWER TO COMPLAINANT'S BILL.

State of Mississippi, et als.,
vs.
Mobile, Jackson & Kansas City Railroad Company, et al.

Now comes the defendants to the Bill of Complaint in the above stated cause and leave of the court being first had and obtained amend the answer filed in this cause on, to-wit: the 22d day of September, 1904, by re-writing the same so as to make read as follows:

1. Defendants admit that the Mississippi Railroad Commission is constituted and exists and charged with the duties alleged in the first paragraph of said bill.

2. Defendants admit the organization of the Gulf & Chicago Railway Company with authority to construct and operate a railroad as alleged and set forth in the second paragraph of said bill.

3. Answering the third paragraph of said bill of complaint defendants admit that at the time of the organization of the Gulf & Chicago Railway Company as aforesaid there was in existence and being operated in the town of Pontotoc in the State

of Mississippi to the town of Middleton in the State of Tennessee, a nar ow gauge railroad known as the Gulf & Chicago Railroad Company and that said narrow gauge road was built about the time and has been operated and in existence as is set forth in said third paragraph of said bill.

4. Defendants deny that the Gulf & Chicago Railway Company was bound by the acquisition of the said narrow gauge line from Pontotoc, Mississippi, to Middleton, Tennessee, to continue and preserve intact throughout its entire length said line of railway from the town of Pontotoc, north, and that the consolidation corporation, the Gulf & Chicago Railway Company, and its lessee, the Mobile, Jackson & Kansas City Railroad Company, were in turn bound to so continue and preserve in tact the said line broadened and standardized, and deny that it so stipulated in the articles of consolidation; but defendants allege and charge that by its charter the Gulf & Chicago Railway Company was authorized to construct its line of road from a point near Decatur, Mississippi, in a northerly direction through the county of Pontotoc, to the town of Brownfield in the county of Tippah, and by the articles of consolidation the constructed narrow gauge railroad acquired from the Gulf & Chicago Railroad Company and running from the town of Pontotoc, Mississippi, to Middleton, Tennessee, was to be broadened and standardized and thereupon to become a part of the line operated by the said consolidated corporation; all of which said stipulation and requirements have been strictly carried out by the defendants in said bill.

5. Defendants admit that prior to the 6th day of July, 1903, said railway companies were consolidated under the name of the Gulf & Chicago Railway Company, as mentioned in said bill and that on the 6th day of July, 1903, a petition was presented to the complainant, the Mississippi Railroad Commission, by the attorneys for the consolidated corporation, praying the approval by said Railroad Commission of the said consolidation; that in said petition it was stipulated, and by the granting of said petition by said Commission it was agreed that the said consolidated corporation should broaden and standardize said narrow gauge line running north from the town of Pontotoc, but defendants deny that it was to be broadened and standardized as it then existed, and was being operated throughout its entire

lergth. Defendants allege the fact to be that prior to the filing of the petition with the Railroad Commission of the State of Mississippi, seeking its approval of said consolidation, the agents and officers of said defendants (or some of them) had caused surveys to be made through the town of Pontotoc with the view to best subserve the interests of the people of that community in the location of its line and the establishment of its depot in the said town. That when said surveys were made and the maps, plans and profiles showing the same were completed it became apparent that physical conditions existing in and around the town of Pontotoc were such that it would be impossible to hutilize that portion of then arrow gauge line extending from its old depot in the town of Pontotoc north about one mile; defendants further alleged that they immediately took up the question of re-locating that portion of the old narrow gauge line, so extending north for about one mile, with the citizens of the town of Pontotoc and patrons of the road in the immediate vicinity; that a public was called and after the purpose of the meeting and the call had been extensively advertised in the newspaper published in the town of Pontotoc and otherwise advertised, the citizens and patrons came together for the purpose of considering the question of re-locating that portion of said narrow gauge line and of changing the location of the depot of the consolidated company; that said meeting was held prior to the making of said application for the consolidation of the companies to the said Mississippi Railroad Commission, and at said meeting the reasons for re-locating that part of the narrow gauge line hereinbefore mentioned, were fully explained to the people of Pontotoc, and patrons of the road who attended the same, and a vote was taken as to whether the town of Pontotoc and the then patrons of the road would give their consent to such charge and re-location, and upon said vote being counted it was ascertained that by an overwhelming majority of those present approved the position taken by the officers and agents of the railway companies, defendants herein, and agreed that it was impracticable to broaden and standardize and operate and maintain that short portion of the old narrow gauge line because of the natural obstacles intervening to the successful building of the road south to connect with the portion then being built from Decatur, Mississippi, northward. Defendants further allege that

before the issuance of the injunction in this cause, they had expended large sums of money in acquiring rights of way, grading its tracks, and building its line along where it now lies and had practically completed its said line; had erected at great expense its depot building and had moved into and was occupying the same; that the complainant, Mississippi Railroad Commission, had full knowledge of the expenditure of said money by the defendants, and knew full well that said money had been expended upon the faith of the agreement which they had entered into with the citizens of the town of Pontotoc and patrons of the road. They further allege and charge that, when said consolidation was had as hereinbefore mentioned, it was the purpose and intention of these defendants (which was well known to complainant said Railroad Commission) of making for said consolidated company a through trunk line of railroad for the interstate commerce and the transmission of the United States mail between the states of Alabama, Mississippi and Tennessee, and that one of the vital objects to be attained was to shorten the line of said company in every way possible in constructing, broadening and standardizing the same so as to enable it to compete with other trunk lines leading from the waters of the Gulf of Mexico north, west and east, and procuring for the State of Mississippi and other states through which it passed quick communication with all markets of the world. Defendants further allege that a refusal to permit these defendants to carry out their said purpose will impose unnecessary and unreasonable burdens upon the interstate commerce and will violate in letter and in spirit Section 8, Article I., of the Constitution of the United States.

6. Defendants admit that on or about the date of the approval of the consolidation of said defendant companies the defendant Gulf & Chicago Railway company, executed a lease to the defendant, Mobile, Jackson & Kansas City Railroad Company of its property and for the time mentioned in said sixth paragraph of the bill, and that since the execution of said lease the defendant, Mobile, Jackson & Kansas City Railroad Company, has been in the possession of said property operating as alleged and set forth in said bill.

7. Defendants deny that defendant, Gulf & Chicago Railway Company, in violation of the terms and in disregard of the

representations contained in its petition for approval of said consolidation by complainant ,the Mississippi Railroad Commission, to the effect that said narrow gauge line of railroad extending from the town of Pontotoc, Mississippi, to the town of Middleton, Tennessee, should be broadened and standardized throughout its entire length and made a part of the line of said consolidated corporation authorized to construct by its charter, has, as complainants are informed and believe, and charge, broadened and standardized said line from Middleton, Tennessee, southward to the town of Pontotoc, and the lessee, defendant, Mobile, Jackson & Kansas City Railroad Company, is now operating said line, changed to the said point at which it has been broadened and standardized (and the remaining part of said line has been re-located as hereinbefore alleged).

Defendants deny that about one mile of said narrow gauge road has been abandoned, and deny most positively that said re-location has been in violation of the agreement of consolidation; and in this connection they allege the fact to be that complainant, the Mississippi Railroad Commission, knew when it granted said petition for consolidation that it was the purpose of said consolidated company to straighten said narrow line and as thus straightned to broaden and standardize the same for the purpose and with the intention set out in this answer, and that with said full knowledge said petition was granted and thus said agreement became and was binding upon these defendants to make, build and construct said old narrow gauge line, preserving only its general course between said terminal points mentioned in said petition and agreed to by complainant, the Mississippi Railroad Commission; that the sole purpose of the said complainant, the Mississippi Railroad Commission, was to see that the new, or consolidated company did not become a competing line and that it did not infringe the laws of Mississippi in this particular; and defendants further allege that their course in reconstructing, broadening and standardizing said narrow gauge line does not in any way infringe any law of said state either in letter or in spirit; defendants aver that said re-location was made with the consent and approval of the citizens of the town of Pontotoc at a duly advertised public meeting thereof; and defendants deny that that part of said road so re-located is the most valuable and most important part of the same; they deny that

it extends through a thickly populated district. Defendants allege the fact to be that the only representation made was that the line of the consolidated company, when broadened and standardized, would in no sense be a parallel or competing line with the said narrow gauge line and that it was the purpose and intention of said consolidated company to acquire said narrow gauge line and thereafter operate it as a part of the through trunk line, having its terminals fixed between certain points set out in its charter and in the petition for consolidation and traversing the territory intervening between and through the three states hereinbefore named in this answer; all of which is being done without inconvenience to the people of the town of Pontotoc and in strict compliance with the laws of the State of Mississippi.

8. Defendants deny that a part of said line has been abandoned and its operation discontinued, and that they have refused to broaden and standardize that portion; but allege that part of said line has been re-located and adjusted to the main line of defendants; they allege the fact to be that complainant, the Mississippi Railroad Commission, made an order in the month of January, 1904, requiring defendants to build a depot on that part of the line of said narrow gauge road after the same had been re-located as aforesaid, the enforcement of which order has been enjoined and restrained by the order of the United States Circuit Court for the Southern District of the State of Mississippi, which said suit is now pending in said Circuit Court of the United States and was so pending when the injunction in this cause was granted, said United States Circuit Court having jurisdiction to hear and determine all the questions made by the complainants in said bill of complaint; and defendants further allege that this Court should not assume to adjudicate any of the matters and things herein set up as it brings about an unseemly conflict between the jurisdiction and authority of the Federal Court and the state court in this cause. Defendants further allege that said order of complainant, the Mississippi Railroad Commission, requires defendants to construct said depot on the old site of the depot used by the former narrow gauge line, and they allege said depot is outside of the original town of Pontotoc and if located on the site designated by complainant, the Mississippi Railroad Commission, it would be directly in one

of the streets of said town and if defendants should offer to locate and build its depot on said site the town of Pontotoc would have the right to have it torn down and abate the same as a nuisance; compliance with the said order of the complainant, Mississippi Railroad Commission, will cause defendants to lengthen its line, greatly increase its fixed charges and cost of operating said line of railroad.

9. Answering the allegations contained in paragraph 9 of said bill defendants say, they are not informed as to whether the narrow gauge line formerly operated in the town of Pontotoc was constructed with the view to extending south of said town or not, but they allege that the line of railroad now being constructed (in fact now completed) by the defendant, the Gulf & Chicago Railway Company, from Decatur, Mississippi, to Middleton, Tennessee, was constructed upon a wholly different scheme of grades from that upon which the narrow gauge line was constructed, and further allege that the grades necessarily adopted for the construction of a narrow gauge line of railroad are such as will enable it to transact its business with the least expense and with the view to enabling it to successfully meet the competition of other lines of intersate carriers; defendants allege that if the grades upon which the Gulf & Chicago Railroad (the old narrow gauge line) was built had been adopted for the standard gauge line of defendant the Gulf & Chicago Railway Company, it would have been practically impossible to operate said line of railroad successfully because of the heavy grades; would have put defendant, Railway Company, to additional cost of construction in an enormous sum of money; would have materially lengthened the line; and would have enormouly increased the cost of operating said line; and would have increased the cost to defendants of transacting all interstate business from Mobile, Alabama, through the states of Alabama, Mississippi and Tennessee. Defendants deny that said town of Pontotoc has been building for the past twenty years with reference to the line of the narrow gauge railroad, but allege the fact to be that said narrow gauge line of railroad and the depot formerly used in connection with it were located in the town of Pontotoc with reference to the town as then built and wholly without intelligent consideration being given either to the cost of constructing or operating a standard gauge railroad south of the town of Pon-

totoc as an extension of said narrow gauge line. Defendants deny that the charge of said line will disturb established conditions and practically break up a prosperous community for the benefit of defendants and property owners in another part of the town; they deny positively that the interests of the public are involved in the said change of line and that the property of more than a thousand people is involved. Defendants aver that the interests of only a few individuals are involved and that the only people whose interest are affected by said charge are the citizens of the town of Pontotoc itself, and they further aver that said citizens in mass meeting assembled and convened for the purpose of considering whether or not they as a community would give their consent to said change, and having canvassed the whole situation by vote granted their consent to said change; and defendants aver that less than a dozen citizens at said meetings voted in the negative in regard to making said change. Defendants aver that upon the faith of the consent of the citizens of Pontotoc so given they proceeded and laid out and expended before the filing of the bill in this cause; defendants further allege that an overwhelming majority of the people living in the town of Pontotoc and owning property therein are entirely satisfied with said change and conditions as they now exist. Defendants admit that the original town of Pontotoc is the county seat of Pontotoc county, as fixed by an act of the legislature of the State of Mississippi in so far as the government of the town is concerned, but defendants deny that they have violated in any way Section 187 of the Constitution of the State of Mississippi in building their line of consolidated railway or in the erection of the depot; they allege the fact to be that the present depot of defendants is located within the corporate limits of the town of Pontotoc and is in full compliance with said section of the Constitution upon that subject; defendants further deny that there are no natural obstacles to prevent the building of said line into the old depot site and from thence southward to connect with the southern end of the line built from the town of Decatur, north, and they allege that there are just such natural obstacles to the building of the said line south from the end of the old narrow gauge line as is contemplated by said Section 187 of the Constitution of Mississippi, vis.: that the southern end of the old narrow gauge line runs into a deep hollow and ends

at the foot of a cluster of big hills, which to dig away and cut through in order to make said line an interstate trunk line of railway such as defendants now have would require the expenditure of large sums of money and entail upon defendants long delay, and would so embarrass and hinder it in its operation as to make the same a natural obstacle, and that said line would thereby be lengthened, and it would be hampered and prevented from doing an interstate business in successful competition with other trunk lines.

11. Defendants deny that their conduct in undertaking to build their said line is in violation of Section 187 of the Constitution of the State of Mississippi, or in wilful disregard of law and the order of the complainant, the Mississippi Railroad Commission, or that it shows a reckless indifference to the rights of the people long established; but they allege that they have fully complied with Section 187 of the Constitution of Mississippi, in regard to the location of its line.

12. Defendants deny that they are engaged in the violation of any of the laws of the State of Mississippi, and the order of the Railroad Commission of the State of Mississippi approving the consolidation aforesaid, and the rights of the public; and allege that they have gone to considerable expense and trouble to ascertain the wishes of the public and have sought in every way possible to accommodate their ways and works to the best interest of the public and the convenience of commerce; and allege the fact to be that, considering the physical surroundings its depot is located at the place most convenient for the transaction of its business in the town of Pontotoc, consulting both its interest and the convenience of the public.

And now having fully answered, these defendants pray that the injunction issued against them may be dissolved and they be discharged with their reasonable costs.

McIntosh & Rich,
J. T. Faulkner,
Fontaine & Fontaine,
Solicitors for Defendants

Filed October 3rd, 1905.

W. T. Furr, Clerk,
By W. J. Lyon, D. C.

THE STATE OF MISSISSIPPI,
Pontotoc County.

The State of Mississippi
vs.
The Mobile, Jackson & Kansas City Railroad Company, et al.

It is agreed by and between the solicitors for the complainant and the defendant in the above stated cause, that the depositions of such witnesses as may be offered, both for the complainant and the defendant, shall be taken before the Chancery Clerk of Pontotoc County, Mississippi, said depositions to be taken before a stenographer, and when transcribed, shall be read on the trial of said cause without objection of either party except as to competency, relevancy and materiality of the evidence; and said objections, for the causes named, may be presented at the time of the trial of said cause.

WILLIAM WILLIAMS, Attorney General,
MITCHELL & FLETCHER, of Counsel,
Solicitors for the Complainant.

McINTOSH & RICH,
J. T. FAULKNER,
FONTAINE & FONTAINE,
Solicitors for the Defendants.

The State of Mississippi
vs.
The Mobile, Jackson & Kansas City Railroad Company, et al.

Depositions of Certain Witnesses in the above cause, taken on November 15 and 16, 1905, before the Chancery Clerk for Pontotoc County, State of Mississippi, as per foregoing agreement:

W. A. DOZIER, a witness sworn on behalf of the complainant in the above entitled cause, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

QUESTION. State your name.
ANSWER. W. A. Dozier.
Q. How old are you, Mr. Dozier?
A. Sixty-two years old.

Q. What official position, if any, do you hold in the State of Mississippi?

A. I am County Surveyor of Lee County.

Q. How long have you been County Surveyor?

A. Seven years.

Q. What experience have you had as a practical surveyor, if any, Mr. Dozier?

A. Well, nothing more than surveying land and ditches.

Q. How long have you been engaged as a surveyor?

A. As a surveyor?

Q. How many years, yes, sir?

A. Well, I have been surveyor off and on since '68.

Q. Mr. Dozier, did you ever make any surveys of the station down here about what we commonly call the old depot?

A. I did.

Q. Just state what lines you run, if any, at that place.

A. Well, I ran the line: half section, through four, I believe, and thirty-three south.

Q. Did you make any measurements?

A. Yes, sir.

Q. Well, sir, what measurements did you make?

A. Well, we measured from where the line crosses the railroad incorporation line; we measured the road then into the corporation—how far it run in the end of the road.

Q. You measured from the corporation line to the point where it struck the—how was that, now? State that over.

A. We measured from the incorporation line to the end of the track.

Q. How far was that?

A. It was in my affidavit. You will have to let me look at that.

Q. I hand you this paper and ask you to state what it is.

A. This is an affidavit that I made before the Notary Public.

Q. When did you make that affidavit, Mr. Dozier, with reference to the time you made the surveys?

A. It was the first day of April, I believe, it is signed here.

Q. When was the survey made?

A. It was made a day or two before that?

Q. Are those figures stated there correct?

A. Yes, sir, I think they are.

Q. Now, I will get you to look at that affidavit, for the purpose of refreshing your recollection, and state what is the distance from the corporation line, down the track of the old narrow gauge depot to the southern end of the narrow gauge line?

A. It is twenty-two feet.

Q. Twenty-two feet?

A. Yes, sir, it runs into the incorporation twenty-two feet.

Q. Now, do your measurements show that the whole length from the point where the narrow gauge railroad leaves the railroad as at prasent estblished, down to the southern end of the narrow gauge line?

A. Yes, sir, I think it does. Let me see—yes, sir.

Q. What is that distance?

A. It is six hundred and twenty-nine feet.

Q. Do I understand that you say it is six hudred and twenty-nine feet? Let me see that just a minute, Mr. Dozier. Now, Mr. Dozier, do I understand you to say that the whole distance from the point where the narrow gauge road leaves the road as it is now established—

A. The now road out here?

Q. Yes, sir—down to the southern end of the line, is six hundred and twenty-nine feet?

A. No, sir; that is, I think, about forty-nine hundred feet.

Q. About forty-nine hundred feet?

A. I thought you were speaking from the old depot back.

Q. Yes, I thought you misunderstood the question.

A. Yes, sir, the other is forty-nine hundred, I think. It is there in the affidavit.

Q. Now, Mr. Dozier, did you make any other measurements?

A. Yes, sir; I measured from where this old road intersects the new road down to where this line that we measured crosses through here where it intersects the road.

Q. How far was that?

A. I think it was about thirty-one hundred feet. I am not certain. It is there on the affidavit.

Q. Thirty-one hundred feet?

A. Yes, sir.

Q. Did you measure the distance from the point of divergence of the road to the new depot? I will get you to refresh your memory from this affidavit and state what that distance is.

A. Yes, sir—fifty-seven hundred and forty-eight feet—the same measurement from the distance up to the track of the old road from the old depot to a point where the said railroad diverges from the present.

Q. Yes, sir.

A. That is fifty-seven hundred and forty-eight feet.

Q. All right. Can you tell the distance from the diverging point of the two railroads to the new depot, measured along the new line?

A. Along the new line?

Q. Along the new line, yes, sir.

A. Let me see—thirty-three hundred feet.

Q. Thirty-three hundred feet?

A. Yes, sir.

Q. Now, Mr. Dozier, did you measure any lines from the southern end of the old railroad to a point on the new railroad?

A. Yes, sir.

Q. Just state what that measurement was?

A. That is forty-nine hundred feet; that is forty-nine hundred feet, in place of this measurement.

Q. Forty-nine hundred feet?

A. Yes, sir.

Q. That forty-nine hundred feet, then, is the distance from the southern end of the old railroad to where a line might strike the new railroad, is it?

A. Yes, sir, southwestward direction.

Q. How far was it, if you know, or if your measurements showed, from that point on the new road to the new depot, measured along the new line?

A. Thirty-one hundred feet.

Q. Thirty-one hundred feet?

A. Yes, sir.

Q. Did you make any other measurements, Mr. Dozier?

A. I believe that was all. We taken the grade of the road up there, the old road.

Q. Just state what your finding was with reference to the grade.

A. About two and a half per cent.

Q. Now, what grade was that you were talking about?

A. From the old depot up the track.

Q. Up the old track?

A. Yes, sir.

Q. To the point where the new railroad and the old rail road—

A. No, sir; to the top of the hill. You see, we went to the top of the hill.

Q. Now, what grading on the old railroad, if any, was steeper than two and a half per cent.?

A. I don't think there was any. I am not positive about it. That was an average—two and a half per cent.

Q. An average of two and a half per cent. grade?

A. Yes, sir.

Q. Mr. Dozier, do you know anything about building railroads?

A. No, sir; never had any experience in it at all.

Q. Now, the route of the railroad—which the railroad would follow from the southern end of the line to the new line —what is your opinion as to whether it was a feasible or practical route?

A. Well, from what I heard engineers say, I though it would be all right. I don't know myself, because I am no railroad man.

Q. What was your answer to that?

A. I say from what I heard engineers say about going through lines, I thought it was a feasible route, but I don't know of my own knowledge.

Q. Do you know where the line or that point was on the new railroad where your line struck it, with reference to a trestle down there?

A. No, sir. We struck it—I don't recollect about it, Mr. Fletcher.

Q. Don't recollect about the trestle?

A. No, sir.

Q. Very well, I believe I have asked you about all the measurements you made, Mr. Dozier?

A. Yes, sir.

CROSS-EXAMINATION BY MR. JOSEPH C. RICH.

Q. Mr. Dozier, at whose instance did you make these surveys?

A. I was brought here by Mr. Kincannon.

Q. A member of the Railroad Commission?

A. Yes, sir.

Q. Paid by Mr. Kincannon?

A. No, sir; the town—Mr. Carr paid me.

Q. Paid by Mr. Carr?

A. Yes, sir.

Q. You say you have had absolutely no experience in building railroads?

A. Railroads, no, sir.

Q. Surveying routes for railroads?

A. No, sir. All the experience I have had in building ditches.

Q. Do you know anything of the principles upon which railroad routes are determined?

A. No, sir.

Q. What instruments did you use?

A. I had a level and a compass.

Q. Can you determine grades with a level and a compass?

A. O, yes, sir; I have got a level for that purpose—to drain ditches.

Q. Determined with accuracy?

A. Not with accuracy, of course, you would get that with a different instrument—just a small instrument.

Q. Who assisted you in making these surveys?

A. Mr. Staten. He carried the rod for me up the track.

Q. Mr. Skinson?

A. Mr. Staten.

Q. Who is he?

A. A clerk for Mr. Carr.

Q. Is he surveyor?

A. He went with the engineers on the route when they surveyed it.

Q. He is just an employe of Mr. Carr's? Nothing else—he is just clerking there?

A. That is the first time I ever met him.

Q. Has he had no experience in making surveys?

A. Nothing more than carrying the rod, he told me.

Q. You say you judge from what you have heard engineers say that that was a fairly good route for railroads. What engineers have you heard?

A. I don't know now.

Q. Well, this particular route?

A. Nobody, that route at all—just what I heard they were—

Q. You never heard anybody say that that was a good route for a railroad?

A. No, sir; no engineers.

Q. You are familiar with the streets of Pontotoc?

A. Well, just this street right around here—the main street.

Q. Do you know the location of the streets?

A. O, yes, sir; I know the location of the streets that run down here.

Q. Do you know the location of the old narrow gauge depot?

A. Yes, sir.

Q. Was or not that depot in the street?

A. I think it was.

Q. It is a fact—you know that to be a fact?

A. Yes, sir; it is so stated in my affidavit, I think.

REBUTTAL EXAMINAT'ON BY MR. FLETCHER.

Q. Was it the depot that burned, Mr. Dozier, that was in the street, or the one that they built down there now; which was it?

A. It was the ane that was burned.

Q. Do you know the one down there now—the freight depot—whether that was i the street or not?

A. I don't know anything about it.

Q. Do you know whether the railroad has any property south of that street railroad—where the old depot was constructed at?

A. I don't recollect.

Q. How far south of the burned depot does the track extend now?

A. O, I reckon it is three or four hundred feet—three hundred and something, maybe.

MR. EDWARD C. FINLEY, a witness, sworn on behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Mr. Finley, just state your name and place of residence.

A. Edward C. Finley, Tupelo, Mississippi; headquarters at St. Louis.

Q. What is your business, Mr. Finley?

A. I am a civil engineer, and in the supply business.

Q. State what experience you have had as a civil engineer.

A. I have had about fourteen years experience in location, construction and maintenance work.

Q. Do you know anything about building railroads?

A. Well, that has been about all of my experience.

Q. Well, Mr. Finley, did you make any surveys or examination of the situation around what you know as the old depot site in the town of Pontotoc, at any time, with reference to seeing whether it could be connected with the line as at present constructed?

A. Yes, sir, I made a survey of that nature.

Q. When was that survey made, and at whose instance, and who was with you, if anybody?

A. That was made in April, and Mr. Kincannon sent me to come over.

Q. What was the purpose or object of that survey, Mr. Finley?

A. Oh, it was to determine the relative location of this old line to the new line to be built, and whether or not they could be connected under certain allignments.

Q. Well, sir, just state what points were the objective points of the survey.

A. Why, about on the new line, about nine hundred feet north of the trestle—the trestle south of the depot—I think it is the first trestle.

Q. What was the other objective?

Q. A point to the east end of the old line just south of the depot, several hundred feet south of the depot, about the end—within fifty feet, we will say, of the end.

Q. Mr. Finley, what do you understand to be the maximum curvature which is allowed in standard railroad building, expressed in degrees?

A. Well, at this time, about four degrees—four or six—different parts of the country.

Q. What was the railroad's opportunity of constructing a line on a four degree curve?

A. We found that they might do in within four degrees; that is, not to exceed four degrees of curve.

Q. Did you make any diagram, map or plat, or whatever the proper term is in surveying language, of that occasion?

A. Yes, sir.

Q. Have you got that now, Mr. Finley?

A. Yes, sir.

Q. What is that paper that you hold in your hand?

A. That is a plat, showing the relative locations of the two lines when the ends connect—how they could be connected, with what curvature they could be connected.

Q. What does that red line represent?

A. That is a projected line between this point nine hundred feet north of the north end of this trestle.

MR. RICH: That is the old line?

A. No, sir, that is the new line, and this is the old line here. This begins at a point about nine hundred feet north of the north end of the trestle, and connects right near the south end of the old line.

MR. FLETCHER: Now, will you take your pencil there and indicate the points of the compass on that? I believe it has not been done yet.

A. This is north, east. It seems we did not show any magnetic bearings, nor the line between these two points.

Q. In a general way, without being especially accurate, this is north?

A. Yes, sir, on the map.

Q. This is east?

A. This is west and this is south, approximately.

Q. Now, Mr. Finley, do I understand that this most westwardly line of the railroad is commonly what is known as the new railroad?

A. Yes, sir.

Q. And this easterly line is what is commonly known as the narrow gauge?

A. Yes, sir. This magnetic point is north fifty-five east.

Q. I will ask you to make the diagram Exhibit A to your deposition.

A. Yes, I will do as requested, and make it Exhibit A to my deposition.

CROSS EXAMINED BY MR. RICH.

Q. Mr. Finley, how long did you say you have been an engineer?

A. Oh, about fourteen years.

Q. And in that time what number of railroads have you located or surveyed?

A. Well, let me see—I worked for the East Tennessee, Virginia and Georgia, and for the Southern—

Q. I ask you now about the work you supervised.

A. That I supervised in—well, I made a number of surveys through the country for roads, and I have located a line for the Southern Pacific, and built it—

Q. Where was that built?

A. In Southern Texas.

Q. How much of it?

A. Thirty-five miles.

Q. Thirty-five miles?

A. Yes, sir.

Q. Well, is that the only railroad upon which, or is that the only railroad constructed upon a survey made by you?

A. No, I built thirty-five miles in St. Louis.

Q. Is that a railroad in St. Louis?

A. Yes, sir.

Q. A belt line?

A. In the World's Fair Grounds.

Q. Well, were you in charge of that work, or just employed there?

A. Well, I was employed by the Exposition Company, but I had charge of the work.

Q. Were you directing it, supervising it?

A. Yes, did all the locating and designing.

Q. Well, now what controls an engineer in selecting a route for a railroad—what are the controlling phases?

A. Well, it depends to a certain extent on the nature of the country and sometimes on the products of the country; but economy in construction, and economy in loads that can be hauled, and economy in maintenance after construction, are the points that are usually considered.

Q. Well, a railroad constructed with a curvature of four degrees would involve the most extravagant expenditure, would it not, both in operation and construction?

A. Four degrees?

Q. Yes, sir.

A. O, no. Four degrees are allowable in most any railroad.

Q. Well, isn't it always avoided if possible?

A. As a matter of course any curvature is to a certain extent objectionable.

Q. But I understood you to say that that was the highest degree permissible.

A. No, I said four to six, but some small lines are built on even ten to twelve.

Q. I am talking about a railroad operated from Mobile to Jackson, Tennessee, or Middleton, Tennessee, three hundred miles long, carrying through trains.

A. I would make an effort to keep the curvature as low as four degrees.

Q. That sort of curvature at any particular point would control the train loaded at the whole line?

A. Depending upon tbe grade.

Q. Mr. Finley, as a matter of fact, isn't this country immediately around Pontotoc an exceedingly difficult one in which to construct a railroad?

A. Well, it is—I don't know that you would say an exceedingly difficult one, but it is more difficult than many parts of the country.

Q. How long were you engaged in making this survey —the one made at the instance of Mr. Kincannon?

A. Well, we spent a day at that, I believe.

Q. And who assisted you?

A. I don't know what that man's name was.

MR. FLETCHER: His name was Mr. Scobie.

A. Mr. Scobie, yes, sir.

Q. Was he an engineer?

A. Yes, he was an engineer.

Q. How much would it cost, Mr. Finley, to build a railroad over the survey—the one you made?

A. Well, I didn't figure that.

A. Well, you were proceeding then upon the idea that somebody else would have to figure that and pay for it? Your interests were not taken into account?

A. I certainly would not have to pay for it.

Q. You never expected Mr. Kincannon or Mr. Carr to contribute anytihng?

MR. FLETCHER, for the complainant, objected to the last two questions above.

Q. So you have then made a survey for a railroad without any idea of ever making any calculation as to what it would cost?

A. I was working for somebody.

Q. I understand—I understand.

A. I was getting information.

Q. Of course, I am not criticising you. I understand the conditions under which you came here.

A. I understand that.

Q. Do you understand how many cuts or fills would have to be made or attended to along the survey you made?

A. Well, I believe that there was one cut and two fills.

Q. Do you know how deep that cut was?

A. Well, no, sir, I don't know how deep, because I didn't take the levels over it.

Q. Wouldn't it be at least fifty feet?

A. Well, it would be a good, deep cut.

Q. Wouldn't you probably have to remove from sixty to seventy five thousand yards to get that cut opened on the course you were figuring on?

A. It would be heavy work.

Q. What is the average cost of removing dirt per yard under those conditions in this country?

A. O, about eighteen to twenty cents.

Q. About twenty-one cents is the contract price up here, isn't it?

A. I don't know.

Q. Twenty-one cents is about a fair average?

A. Eighteen to twenty cents.

Q. Well, if you would have to remove about sixty thousand yards that one cut would cost about twelve thousand dollars?

A. Figured on that basis. I don't say the cut would cost that. But your figures, assuming it would be seventy-five thousand yards, it is a matter of arithmetic.

Q. Mr. Finley, taking the terminus of that narrow gauge line at a starting point, extending that road south—speaking as an engineer, would you say there were any physical obstructions or obstacles to building a railroad in Pontotoc?

A. Beginning at the south end of this—

Q. Yes, the old narrow gauge line?

A. Well, it is owing to how far you are going south.

Q. Well, suppose you were going south to Decatur, Mississippi—(to Mr. Jones: How far is that—about one hundred and sixty miles, isn't it?) Well, say one hundred and forty miles south.

A. I don't know.

Q. You can't say whether there are any physical obstacles or not?

A. No, there might be some below; I have not seen them.

Q. But I mean here.

A. At Pontotoc?

Q. Yes. How much hill would you have to cut down to get out of Pontotoc to go south?

A. Well, there is not any hill right at the station. It is some distance down there to the hill and what is below there I don't know.

Q. Well, as a matter of fact, you have no idea? You did not make any careful estimate or survey?

A. Except what you show on that plat.

Q. I understand, but I say, as a matter of fact, you made no careful estimates?

A. No, no, we did not.

Q. If you had come here with a view of building a railroad you would have come with ample assistance and equipped with all the necessary appliances; and how long would you have spent in this territory making that survey were you going to report to some one man the propriety or not of building a railroad; how long would you have been here?

A. That is something I could not answer, and nobody else.

Q. Two or three weeks possibly?

A. You can't tell. You find the country, and you don't know until you get through.

Q. Yet, your examination comprised one day?

A. Yes, sir.

Q. And did not involve any estimate of the cost whatever?

A. No, sir.

Q. Would the line you surveyed, Mr. Finley, be longer or shorter than the present line? operated

A. I don't know exactly where the present location is north of the depot.

Q. You don't know whether it would be longer or shorter?

A. Well, I judge it would be some longer.

Q. Your line?

A. Yes, as located from the point that we left the new line to the old line would apparently be longer. Of course, I don't know what this allignment is—it might go around some peculiar route.

Q. As a matter of fact, it would be about three-fourths of a mile long, wouldn't it? I am not asking you for accurate figures, but approximately, a mile to three-quarters of a mile?

A. No, I think it is only about three-quarters across there. That wouldn't increase the—yes, I guess it would; yes, sir.

Q. It would be at least three-quarters?

A. Yes, about three-quarters. Well, I don't know, of course.

Q. I am not asking you for anything accurate. As I understand, you have made no accurate survey.

A. No, sir.

Q. Do you know anything about the cost of operating trains?

A. Yes, I think I do.

Q. How much does it cost—average cost—to operate a train per mile?

A. Well, it depends on so many conditions, I don't know. It depends on what your train is—what your grades are.

Q. Yes, but I am asking about trains generally—the average. Take including passengers, freight, through trains and local trains; it would be at least a dollar, would'nt it.

A. No, they figure a passenger train at a dollar, possibly. I suppose it costs about fifty cents.

Q. And freight trains?

A. It depends on the tonage and the load.

Q. I am talking about both kinds—the average. A freight train costs very much more than the passenger?

A. More?

Q. I am asking now if the passenger would not be at least a dollar?

A. When they figure passenger trains at a dollar and two or three cents, I say they cost about fifty or sixty cents, and freight trains cost more than a dollar.

Q. If a passenger train costs ninety cents to operate it and it paid a dollar, it would still be paying? When they say it pays, I don't understand you to mean that it is necessarily fifty cents?

A. No, but I judge it would be without making any figures on it, because the passenger train has got to take care of itself; their maintenance, operating and which is about the same as a freight.

Q. Can you say about what would be the average?

A. Well, I would say—of course, that all depends upon various conditions—seventy-five cents on the dollar.

Q. Now, about how many trains would be operated over this line through Pontotoc, between Mobile and Middleton, under fairly good conditions—how many trains a day?

A. Well, you would have one passenger train each way, a local freight each way; after awhile you would have a through freight each way.

Q. Well, I am talking about when you equip the railroad; when you build a railroad, you take the future into consideration? You expect, do you not, to increase the size of your capacity, your facilities?

A. Certainly.

Q. I am talking about under the best conditions, wouldn't you have eight or ten trains —the minimum?

A. That is figuring on a good deal of development.

Q. Now, if we had eight or ten trains, according to your showing—operating it over your survey, would increase the cost of operating it per train mile about eight or ten dollars, wouldn't it, every day?

A. On your basis of eight or ten trains?

Q. Yes, sir.

A. Yes; that wouldn't be now, of course.

Q. But for every train that was operated through here, it would increase it about a dollar?

A. Seventy-five cents on a dollar.

Q. Now, Mr. Finley, suppose I had employed you to go make a survey of a route for a railroad through Pontotoc, just taking your present knowledge of the conditions, would you advise me to build a railroad over the line you surveyed—just on your route now—as an engineer?

A. If the lines are located as they are?

Q. Oh, no! I am sending you here now to select me a line to build a railroad on.

A. You haven't got any lines there—even the old line?

Q. No.

A. No, sir, I don't think I would go on that route.

Q. It would be a bad line to construct and a bad line to operate?

A. It wouldn't be a very choice line, no, sir.

MR. FLETCHER: It wouldn't be a very what? I didn't hear that good.

A. It wouldn't be a very choice line.

REBUTTAL EXAMINATION BY MR. FLETCHER.

Q. Now, Mr. Finley, if you could conceive of such a thing as for me to build a railroad: Suppose I would send you here to build a railroad with a narrow gauge line, constructed as it is now, what do you think—about what steps would you take toward locating the line?

A. Well, I would naturally take the best line, and try a line south to see if I could get out in this direction—pretty nearly south, that is, something like a continuation of this line. I would probably try this line.

Q. I would ask you whether or not it would be sound engineering if you had a mile of railroad there to abandon that without ever making any effort to see if you could get south or not?

A. No, I would make an effort first to see if I could get a line south from that.

Q. Now, Mr. Finley, I believe you say you have made no effort to run a line directly south from that?

A. No, sir.

Q. Did you make any examination of that new line be-

tween the place where the depot now is and the place where he old line struck it, with reference to the excavation there or fills?

A. Well, yes, in a general way I did.

Q. Are there any cuts or fills on that line?

A. Yes, sir.

Q. How many?

A. I don't remember the exact number. There are several though.

Q. Now, taking this line, as you surveyed it, as shown by the red line on that map there, what is there that is impossible of construction on that line, if anything?

A. I don't see any impossibilities about it.

Q. Now, you were asked about the cost per train mile of passengers, Mr. Finley; if the road had to run three-quarters of a mile further ,would there or not be an increased mileage of the railroad?

A. Yes, sir.

Q. As you understand it, as a railroad man, would there be any increased remuneration to the railroad by the increased mileage?

A. On local business?

Q. Say, passenger business.

A. Yes, sir.

Q. Folks would have to pay for riding that additional mile at the ordinary rates for using the road?

A. Yes, sir.

SURREBUTTAL EXAMINATION BY MR. RICH.

Q. Your prime purpose in constructing a railroad is to shorten mileage, isn't it?

A. Under most conditions?

Q. Yes, sir. Now the increased mileage, you say, would bring increased revenue from local business to the company. It would bring increased cost to the company's patrons, would it not?

A. Yes, sir.

Q. That would increase the cost just as much as the railroad was allowed to charge on all local business through Pontotoc between Mobile and Middleton, wouldn't it?

A. Yes, sir.

Q. Every passenger, if he were not a through passenger, would have to pay some increased cost as to the result of it?

A. Yes, sir.

Q. And the railroad company would be at the increased expense of maintaining and operating it?

A. Yes, sir.

Q. Do you know where this railroad is operated from, and to what points it is operated, Mr. Finley?

A. No, sir, not definitely,

MR. J. C. KINCANNON, a witness sworn on behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Mr. Kincannon, your name is J. C. Kincannon?

A. Yes, sir.

Q. Well, just state what official position you hold in the State of Mississippi, if any.

A. I am a member of the Railroad Commission.

Q. How long have you been such?

A. Well, I have been six years about—on the 21st of this month will be six years.

Q. Do you know anything about the Mobile, Jackson & Kansas City Railroad Company and the Pontotoc controversy about the depot?

A. Yes, sir.

Q. I will get you to state whether or not you were a member of the Commission at the time there was an application made to consolidate the Gulf & Chicago Railroad Company, the Gulf & Chicago Railway Company, in Mississippi, and the Gulf & Chicago Railroad Company in Tennessee?

A. Yes, sir, I was.

Q. Was there an application made to the Commission for permission to consolidate those lines?

A. Yes, sir.

Q. Mr. Kincannon, I will get you to look at that paper and see what it is.

A. Well, this is that application for consolidation.

Q. Is that a true copy of it, so far as you understand it —could you tell?

A. Yes, sir.

Q. Anything else besides the application?

A. Yes, sir, this is the order; I see a copy of the order of the Railroad Commission.

Q. Permitting the application?

A. Yes, sir.

Q. I will get you to make that copy of the application and the order Exhibit A to your deposition.

A. I will do so.

Q. Now, Mr. Kincannon, I want you to state whether or not the promise of the railroad company to broaden and standardize the narrow gauge line was or was not a material consideration of the Commission in giving their consent to the consolidation?

A. It was.

Q. How many members are there of that Commission?

A. Three.

Q. Do you know the sentiment of the majority of the members of the Commission with reference to maintaining or the abandonment of the narrow gauge line down here, as a matter of public policy to the State?

A. Yes, sir, I do.

Q. Is that favorable or unfavorable to the proposition to abandon the narrow gauge line?

A. The sentiment was unfavorable towards abandoning it.

Q. Now, from what you know of the sentiment of the members of the Railroad Commission, I will get you to state whether it would have been—had it been stated to the Commission that they expected to abandon the narrow gauge line through a part of the district and to construct the line as it is now—whether the consent would be given to the proposition?

A. No, sir, it would not.

MR. RICH: Of course, it is understood that this is wholly irrelevant.

MR. FLETCHER: Yes, it was objected to before.

Q. Now, Mr. Kincannon, do you remember at what stage of this matter the Commission was notified, either officially or or unofficially, of the intention of the road to abandon a part of this line and construct the road as it is now?

A. Well, no, I don't remember at exactly what stage—

possibly the first knowledge that the Commission had that they really intended to do so was when they began the abandonment of the line.

Q. Now, at what time did this railroad company—the Mobile, Jackson & Kansas City Railroad Company, or the Gulf & Chicago Railway Company, apply to the Commission for permission to change their depot or abandon their line or make any change in the route as it is located here now, if at all?

A. They never did.

Q. Did you make any visit—

A. (Continued) There was an application made, I believe, but I don't remember whether you made the application or not. There was some question about a depot—no, there was no consent; that is it. There was none. They never applied to the Commission at all.

Q. For permission to do that?

A. No, sir.

Q. Now, in your capacity as Commissioner and official, state whether or not you made any visits to the town of Pontotoc with reference to this matter.

A. Yes, sir.

Q. How many?

A. Well, I have made four or five visits here in regard to this matter.

Q. Well, has the Commission in a body—other members besides yourself—made any visits?

A. Yes, sir, the entire Commission as constituted prior to January 18, 1904, came here in a body. This Commission was composed of Major McKinnis, Mr. Mc. and myself.

Q. Did the Commission reach any conclusion in this matter as to whether they should be allowed to remove the depot or not?

A. Yes, they did.

Q. What conclusion?

A. That they should not be allowed to move the depot.

Q. Now, Mr. Kincannon, at the time that the order was made that they should not move the depot—the order which was enjoined in the Federal Courts—you remember there was a depot at that time, that is, where was the railroad receiving passengers and freight, and delivering passengers and freight?

A. At the old depot site.

Q. At the old depot site?

A. Yes, sir.

Q. What authority, so far as the Commission is concerned, has ever been given to this railroad company or any of its constituent companies, to cease the operation of trains on the old route of the railroad?

A. None.

Q. Mr. Kincannon, were you present in the city of Mobile, at any time, when testimony was taken in the federal case involving some issues that are akin to this?

A. Yes, sir, I was.

Q. Whose testimony did you hear there, if any?

A. I heard the testimony of Mr. Dewey, who was General Manager of the road at that time, and of Mr. Jones, who was the Chief Engineer—no, at that time he was not the Chief Engineer; he had been the Chief Engineer at the time of the location of this line.

Q. I want you to look at this bundle of manuscript, Mr. Kincannon, and state what it is please.

A. Well, this is the testimony of Mr. Dewey.

Q. Have you examined that before at some previous time more carefully than you have time to do now?

A. Yes, sir, I have examined this testimony of Mr. Dewey.

Q. Is there any other testimony there besides that of Mr. Dewey?

A. Yes, sir, that of Mr. Jones.

Q. Is that a correct transcript of their testimony as you understand it?

A. Well, let me see now—I don't know. I reckon Mr. Jones' testimony is in this—yes, sir.

Q. I will ask you to make the testimony of Mr. Dewey and the cross-examination of Mr. Jones parts which you are able to identify—Exhibit B to you deposition.

A. I do so ,sir.

Exhibit "B".

Mobile, Jackson & Kansas City Railroad Company

vs.

The Mississippi Railroad Commission, et al.

The testimony of witnesses on behalf of the complainant,

taken under the pursuant with the agreement of counsel hereto attached.

F. E. DEWEY, being duly sworn by a Notary Public, testified as follows, on behalf of complainant:

DIRECT EXAMINATION.

QUESTION. What is your occupation, Mr. Dewey?

ANSWER. Vice President and General Manager of the Mobile, Jackson & Kansas City Railroad Company.

Q. The complainant in this case?

A. Yes, sir.

Q. How long have you been Vice-President and General Manager of that company?

A. Since November 1st, 1903.

Q. How long have you been engaged in the railroad business?

A. Thirty years.

Q. What experience have you had in official positions?

A. Various official positions, for the last sixteen years. In charge of transportation, traffic and maintenance.

Q. Is the Mobile, Jackson and Kansas City Railroad Company operating the Gulf & Chicago Railway Company's property under a lease now or not?

A. It is, under a lease.

Q. Is that line operated into or through the town of Pontotoc, in the State of Mississippi?

A. It is operated from Middleton, Tennessee, to Pontotoc, Mississippi.

Q. It is not operated south of Pontotoc, is it now?

A. No, sir.

Q. Now, from Middleton, Tennessee, to Pontotoc, Mississippi, what character of business are you doing? What are you carrying?

A. Very largely cotton and cotton products, and merchandise.

Q. And freight and passengers.

A. Freight and passengers.

Q. Are you carrying United States mails?

A. Yes, sir.

Q. Between Middleton, Tennessee, and Pontotoc, Mis-

sissippi?

A. Yes, sir.

Q. To what extent is the narrow gauge line formerly operated from Pontotoc, to Middleton, Tennessee, been standardized?

A. From Pontotoc to Ripley.

Q. What distance is that, approximately?

A. Thirty-seven miles.

Q. Something over half the mileage?

A. Yes, sir.

Q. What work is being done between Decatur and Middleton, Tennessee?

A. The grading is complete the entire distance, and about sixty-five miles of track is laid; a number of stations completed, and work is in progress now—the work of completion.

Q. Is it or not the intention and purpose of this company to construct a line from Decatur, Mississippi, to Jackson, Tennessee?

A. It is the purpose to construct a line to Pontotoc, and standardize the line from Pontotoc to Middleton. Beyond that I am not informed—

Q. You are familiar with the conditions?

A. I am not famliiar with it.

Q. Now, what connections with other lines will you have between the city of Mobile, and, say, Middleton, Tennessee, when the line is completed?

A. Including Mobile?

Q. Yes.

A. At Mobile, the Louisville & Nashville, the Southern Railway, and Mobile & Ohio; at Hattiesburg, Mississippi, the Southern, Central, New Orleans & North Eastern, the Gulf & Ship Island; at Laurel, the N. O. & N. E., and Gulf & Ship Island; at Newton, the Alabama & Vicksburg; at Matheson, the Southern Railway; at Worchester, the Southern Railway; Ackerman, Illinois Central Railroad; at New Albany, the 'Frisco System and at Middleton, Tennessee, with the Southern Railway.

Q. Mr. Dewey, when this line is completed as proposed, will you be in competition with any of these lines for business into and out of Mobile for northern, eastern and western points.?

A. Yes, sir.

Q. If so, what lines?

A. The Mobile & Ohio, and the lines out of Mobile reaching all interior points.

Q. Do you know anything of the present located line through the town of Pontotoc, that constructed and that to be constructed? Are you familiar with the location?

A. I am familiar with the location; yes, sir.

Q. Can you or not tell the reasons for locating the line as it is at present located?

A. No, I cannot. That was located and a part of the work done and was all under contract prior to my connection with the road.

Q. What effect, Mr. Dewey, would lengthening that line at Pontotoc, changing the location and lengthening the line hav? upon your ability to compete with these other lines mentionede

A. Well, for passenger traffic, the time would be important; and the movement from where the old line intersects the new into and out from the old location.

Q. I speak now of simply changing the main line, not of operating spur tracks.

A. Well, the same answer would apply to that. The addition in the time and increased cost of maintaining and operating a longer mileage.

Q. Would it in any way impose additional burdens upon passengers, or upon the patrons of the road?

A. No.

Q. Would it not increase the cost of travel to passengers? Ain't your passenger traffic, your local traffic, predicated upon the mileage?

A. It would increase the burden to purely local travel, but not to through travel.

Q. Well, it would increase the burden upon through travel, say from Middleton, Tennessee, to points south of Pontotoc, if the line was lengthened at that point?

A. Not materially.

Q. Well, I say any?

A. Yes.

Q. Of course it would not be a very large amount, but would it not be increased to the extent that the mileage is increased?

A. On purely local travel, yes.

Q. Yes, I understand. Are you familiar with the old depot site?

A. Yes, sir.

Q. The narrow gauge site?

A. Yes, sir.

Q. What other method is there of getting into that old site except changing the main line at Pontotoc?

A. I don't know of any except operating a spur track there.

Q. Now, Mr. Dewey, suppose you put in a spur track and had to have your trains run over the spur track into a depot located at the old narrow gauge site, what effect would it have on business handled on your line?

A. It would increase the cost of handling.

Q. Well, now, to what extent would that cost be increased?

A. I can only arrive at that on the basis of our expenses per passenger and freight train mile.

Q. You don't know how many miles this line would be increased by that?

A. No, I do not.

Q. You are not familiar with that feature of it?

A. No.

Q. Now, what would the increase be in the cost per mile?

A. Operating over a spur track?

Q. Yes.

A. Our figures for twelve months show a passenger and freight train mile revenue, of a dollar and two cents. My information is that the spur track from a point on the old narrow gauge to where it intersects the new line is substantially a mile and a half, or three miles per train, based on eight trains per day, which I believe is a conservative estimate on the completion, and it would be twenty-four miles per day increased mileage, and at at dollar and two cents, substantially twenty-four dollars per day to operate a spur track of that length.

Q. Now, the same statement as to cost of operation would apply to the increased mileage of the main line?

A. Yes, sir.

Q. And if your main line was increased a mile or less than a mile, it would in the same proportion increase your operating expenses there?

A. Yes, sir.

Q. Do you know, Mr. Dewey, what quantity or what proportion of the work or grading the line through the town of Pontotoc was done prior to the twelfth day of January, 1904? Hadn't practically all of the grading been done?

A. January, 1904?

Q. Yes, sir, January of last year?

A. I could not state positively—my impression is that it was practically done.

Q. Well, now, suppose you undertook the operation of a spur track, and you were required under the law, in backing your train into the depot over this spur track, not to exceed a speed of three miles per hour, and an employee was required to precede the train to the depot, what would be the effect of that sort of a thing upon your ability to compete and the cost of operation?

A. I have given the cost of operation in the statement as per the cost per mile. The time required to make this movement over the spur track would amount to one hour per train, on the basis of three miles per hour.

Q. You mean to say that by that each train would lose one hour?

A. One hour.

Q. In getting into and out of Pontotoc, under these conditions?

A. One hour in getting in and out of Pontotoc under those conditions.

Q. Mr. Dewey, do you know what percentage of freight received at Pontotoc is received in car load lots?

A. I could not say.

Q. You have no figures as to that?

A. I have no figures on that.

Q. Have you, at any time, made any offer to the railroad commission to settle this controversy by building a highway from the court house to the present depot, or to build a spur track from the present main line into the old depot site mentioned in the order of the Railroad Commission?

A. We made an offer to join the town of Pontotoc in improving the road to the new station.

Q. Was there not also an offer made by you, or by your direction, to the Commission, to construct a spur track from your present located main line into the old narrow gauged depot site, for the purpose of delivering the freight in car load lots?

A. I don't know that that proposition was made direct to the Commission. It was made, however, by me.

Q. Well, wasn't it subsequently made to the Commission?

A. My recollection is that it was, at the hearing at Pontotoc, some year ago.

Q. Well, it was a fact that the company was ready to do that?

A. Yes, for the delivery of carload freight.

Q. When your line is completed and in operation, about what number of trains per day would be operated through the town of Pontotoc?

A. As already stated, I believe eight, or four each way per day, is a conservative estimate.

Q. Your idea is that that would be the minimum?

A. The minimum.

Q. Now, what probably, under fairly good conditions with the general development of the country and the increased railroad business, what probably would be the maximum number of trains?

A. On completion?

Q. Yes, on the completion of the road?

A. It would be hard to say; I could not answer that question.

Q. As many as twice that number?

A. In the natural development of the property, yes, but not immediately on completion.

Q. I understand, but I am talking about in the general trend of development—are you prepared to state the cost of constructing that line or the cost of changing it?

A. No.

Q. What interest does the Mobile, Jackson & Kansas City and the Gulf & Chicago Railway Company pay upon its securities?

A. Five per cent. per annum.

Q. Mr. Dewey, does the Mobile, Jackson & Kansas City Railroad Company or the Gulf & Chicago Railway Company, so far as you know, own any land in or about the town of Pontotoc, except its right of way and depot grounds?

A. No, not to my knowledge.

Q. Does what is known as the Mobile Town Site Company own any property in that town, that you know of?

A. Not to my knowledge.

Q. Did you ever hear of its owning any?

A. No.

Q. Have either of these companies any interest in the development of the town, except from the effect upon its business as a common carrier?

A. No.

Q. Well, I will ask you generally, what were your gross receipts at Pontotoc for the year 1904?

A. Forty thousand, eight hundred and ten ($40,810.20) dollars and twenty cents, which includes freight received collect and prepaid, forwarded, tickets and miscellaneous collections.

Q. Now, what is your gross revenue?

A. That is the gross revenue.

Q. About what would be your net revenue there?

A. Approximately, thirty per cent.

Q. About twelve thousand $12,000.00) dollars?

A. Twelve thousand dollars in round figures.

Q. What would be the interest charge on the increased mileage at Pontotoc?

A. On a mile and a half it would be fifteen hundred dollars at five per cent. per annum on its bonds.

Q. That would be taking no account of your stock issue?

A. No account of the stock issue.

Q. And no account of the increased cost of operation?

A. No account of the increased cost of operation.

CROSS EXAMINATION BY MR. FLOWERS.

Q. When did you say your connection with this company began?

A. November 1st, 1903.

Q. Were you connected with the Gulf & Chicago Railroad Company formerly the Gulf & Chicago Railway Company, prior to that time?

A. No.

Q. At the time this connection began, with the Mobile, Jackson & Kansas City, had that line through Pontotoc been surveyed and located?

A. It had in December, 1903. I didn't see the Gulf & Chicago property until sometime in December, 1903.

Q. How long was it after you became an officer of this company, before this offer that you speak of was made to the

Railroad Commission, about the settlement of this controversy?

A. My recollection is that it was in January, 1904, at the hearing at Pontotoc—I would not be positive as to the month.

Q. Did you ever see the petition presented to the Mississippi Railroad Commission, by the attorneys for the M. J. & K. C., and the Gulf & Chicago Railway Company, asking that the Commission ratify the consolidation of the Gulf & Chicago Railway Company with others?

A. No.

Q. You never saw it?

A. I never saw it.

Q. In your capacity as General Manager and Vice-President of the Company, you have had occasion to consider this controversy at Pontotoc, have you not?

A. Yes, sir.

Q. With a view of reaching some settlement of it?

A. Yes, sir.

Q. And with a view of satisfying and observing the laws of the State of Mississippi, in this regard?

A. Yes, sir.

Q. And you say that in considering this question you have never had before you that petition presented to the Mississippi Railroad Commission by those roads, when the consolidation of these companies was asked to be ratified?

A. I have not.

Q. Please state whether you know it was a part of that petition? One of the stipulations in that petition, that the consolidated corporations, the Gulf & Chicago Railway Company, would in the event that the consolidation should be ratified, broadened and standardized, the narrow gauge line as it then existed from Pontotoc, Misissippi, to Middleton, Tennessee?

A. I have stated I never saw that petition.

Q. You never did have occasion to learn that that was in the petition, that they would do that?

A. No.

Q. And you never knew of that fact at all, that this stipulation was in the petition?

A. I did not.

Q. You did not know that they undertook to do that?

A. As I say, I know nothing of the petition or its terms.

Q. The old narrow gauge line, extending from Middleton, Tennessee, to Pontotoc, Mississippi, extended to the old depot site in the town of Pontotoc, did it not?

A. Yes.

Q. How much of that line, as it then existed, has been abandoned in the survey and construction of the new line which passes through—

A. You mean at Pontotoc, or the entire sixty-two miles.

Q. At Pontotoc.

A. Practically a mile and a half.

Q. How much of that, if you know, is in the corporation limits of the town of Pontotoc?

A. I don't know.

Q. Do you know whether any of it is within the corporation limits?

A. There must be some of it.

Q. You don't know how much?

A. Just how much, I don't know.

Q. How far from the point at which the new line leaves the old line is the new depot constructed?

A. I can't give the exact distance. I think about three-quarters of a mile from the old site.

Q. Mr. Dewey, when you say that the minimum number of trains would be eight, in that do you include through-freight trains?

A. We would not have what you would term a through-freight. We undoubtedly would have, naturally, cars coming in practically every train for Pontotoc, and I referred to eight trains as a minimum, that it would necessitate being moved in and out of the spur track.

Q. You intended to embrace in that all of the trains that would run by that town in a day?

A. Yes.

Q. And your figures are based on the assumption that all these trains, under this sort of an arrangement, would have to run down on that spur track to the old depot site?

A. Yes, sir.

Q. And then you say, I believe, Mr. Dewey, if the main line had been constructed by the old depot site, that the increased cost of operation would have been in the same proportion,

did you not, as it would have been if the arrangement had been to operate spur track down to the old depot site?

A. In the same ratio per mile moved.

Q. It would cost more per mile to back a train down to the depot site on a spur than it would if the same mile and a half were a part of the main line?

A. No, my figures of the cost per mile are not based on backing or running ahead, but the average cost per train mile run on the road.

Q. Did you not say that the cost would be increased considerably if you had to back a train down to the old depot site?

A. Only in proportion to the increased miles that the train was moved.

Q. How much more would it cost—we will say, per train, to operate a spur track, than it would if that were a part of the main line, under the assumption that you would have to back down and come out at a speed of not more than three miles an hour?

A. On the actual cost of the number of miles run, I don't know that there would be any difference. There is a difference in the time which is an indirect cost, but is not figured in the average cost per mile run.

Q. At the time that your connection with this company began, how far had the road been constructed north of the town of Decatur?

A. There was grading done along there; what per cent. of the whole, I can't say.

Q. How many miles had been constructed, if you know, since December, 1903?

A. Between Decatur and Pontotoc?

Q. At any place along your line in the State of Mississippi?

A. Ninety-one miles between Beaumont and Decatur, part of it in operation since, June, 1904. Since December, 1903, to about June, 1904, substantially sixty-five miles are now built between Decatur and Pontotoc.

Q. At that time, December, 1903, how much did your line lack of being completed—that is, how much did you lack of having a through line from, say, Hattiesburg, Mississippi, to Pontotoc?

A. A line to Pontotoc would not be through Hattiesburg, Mississippi, but through Laurel and Newton.

Q. Well, take any point in Mississippi to which the line had been constructed at that time.

A. One hundred and thirty-nine miles from Decatur to Pontotoc.

Q. That much had not been completed?

A. Yes.

Q. Now, had the line at that time been completed to Decatur?

A. No.

Q. Well, how many miles south of Decatur, then?

A. It was open from Laurel to Newton, June 26th, 1904.

Q. Now, what I am trying to get at is the number of miles your line had to build to get a through line after your connection with the company.

A. Substantially two hundred miles.

Q. At the time that the order was passed by the Mississippi Railroad Commission, requiring the re-building of a depot in the town of Pontotoc, you lacked then some two hundred miles of having a through line from, say Middleton, Tennessee, to Mobile?

A. Yes, sir.

Q. You were not with the M. J. & K. C. at the time that the depot was burned at Pontotoc, but you were with the company at the time that the Mississippi Railroad Commission passed that order, requiring the rebuilding of the depot at Pontotoc?

A. Not unless it was subsequent to November 1st, 1903.

Q. This order was passed, as I remember the 12th of January, 1904. You were with the company at that time.?

A. Yes, sir.

Q. And at that time you say your company lacked some two hundred miles of having a through line from Mobile, Alabama, to Middleton, Tennessee?

A. Yes, but the entire line was under construction.

Q. Now, Mr. Dewey, did you have anything to do with the location of this line through the town of Pontotoc?

A. No.

Q. Did you have anything to do with determining whether that line would run along the route, which it was at last constructed upon, or by the old depot site?

A. Nothing whatever.

Q. But you have had the question before you as to the

advisability of running a spur track, or of changing the line to the old site, have you?

A. Yes.

Q. I will ask you, do you know which company located this line where the road is now being built, the Gulf & Chicago Railway Company, or the M. J. & K. C.?

A. I don't know.

Q. You don't know whether the lessor or the lessee?

A. I do not.

Q. Suppose at the time that this question was before you it had been shown to you that your lessor had stipulated in its petition to the Railroad Commission or that if they would ratify that consolidation that they would broaden and standardize that line as it then existed, from Pontotoc, Mississippi, to Middleton, Tennessee, would you have considered that that would have required the lessor and the lessee to maintain that line throughout its entire length?

Objected to by the defendant because it calls for the opinion of the witness, as to the effect of the consolidation, the orders of the Commission and the statutes of the State of Mississippi.

A. I have absolutely no knowledge of the petition, and if the matter had been brought to my attention, it would have been a matter for the Board of Directors to determine. My say-so would not have had any weight whatever.

Q. But when you considered the case that fact was never before you?

A. No, my sole desire was to serve the town as a common carrier in the best way we could, after I had knowledge of the controversy.

Q. At the time that this case was brought before you as an officer of the company, was it ever suggested to you that at the time this narrow gauge line was located and that old depot built, that the company which constructed that road agreed with the citizens of Pontotoc to put it at this place for a valuable consideration, which was then paid?

Objected to because the question called for irrelevant and immaterial testimony.

A. I know nothing about that.

Q. That fact has never been before you in your considerations of this case?

A. Not to my recollection.

Q. Mr. Dewey, do you know how much your line from Mobile, Alabama, your main line, to Middleton, Tennessee, would be lengthened as compared with that now surveyed and upon which the road is being constructed? If you were forced to build your line by the old depot site in the town of Pontotoc?

A. I do not.

Q. Do you know how much farther it is by the nearest practicable route from the point north of the town of Pontotoc at which the old line leaves your main line, to the point south of Pontotoc at which it would again strike your new line, than the line between these two points along the route you have surveyed, and agreed upon?

A. I do not.

Q. When you say that if your company should be compelled to build a line by the old depot site it would effect the passenger traffic you only mean to say that perhaps it would cost two and a half or three cents per mile more to passengers if they had to go that route?

A. Whatever the increased mileage is at the rate per mile.

Q. That is the only way it would effect it, so far as you know?

A. Yes, sir.

Q. And so far as you know, that is the only way it would affect your carriage of freights?

A. Yes, sir.

Q. That is, it would make it necessary to haul freight or carry passengers as much farther as is the difference between those two points on your line, north and south of Pontotoc, as described in a previous question?

A. The effect would be in the cost of operation.

Q. If you should build your main line by the old depot site, what extra cost of operation, after the line is completed, would there be over the cost of operation along the line you have adopted?

A. I couldn't answer that question.

Q. Would there be any difference at all except that it would necessitate the carriage of freight and passengers over a little longer distance?

A. I don't know of any other.

Q. When you say that an offer was made to the Mississippi Railroad Commission to settle this controversy by delivering

carload lots of freight at the old depot site, and also to join the town of Pontotoc in the construction of a highway from the new depot to the business part of the town, how do you mean that offer was made?

A. There were two distinct and separate propositions, and as I remember it, both were discussed informally. First, that we would deliver car load freight at the old site, and after that proposition to join the town of Pontotoc in the construction of a good road from the old site to the new site.

Q. Who made that offer?

A. I made it.

Q. To whom?

A. I think, as I say, the discussion was informal. I think I made it to Mr. Bradley, in the presence of Mr. Rich.

Q. That was just in an informal discussion of the matter?

A. Yes, sir.

Q. Was any offer ever made in any tangible form, as to joining the town in the building of this highway?

A. My impression is that Mr. Rich made a formal offer in writing. I can't say to whom. My offer as I say was an informal discus ion of the matter.

Q. You know nothing of your personal knowledge as to the offer that Mr. Rich made?

A. No.

Q. You were not there?

A. I was not present.

Q. Mr. Dewey, you have arrangements of this kind in some places along your road?

Objected to, because the question called for irrelevant and immaterial testimony.

Q. Where you have constructed spur track, or have agreed to construct them over which trains will be backed from the main line to the town, and to depots in the towns off of the main line, have you such arrangments?

A. We have an agreement to do that at Decatur.

Q. And you don't understand that in any case where you might have to back into a town from your main line, you would also have to back in going out, do you?

A. One movement is backwards, it is bound to be.

Q. Well, when you say it might delay you an hour to back over a mile and a half, that is based upon the assumption that you would back going and coming?

A. No, it is not. The question at a speed of three miles an hour preceded by an employee of the company,and I made the statement to move the three miles would necessitate an hour, complying with that regulation.

Q. But you don't know of any regulation of that kind, which would require you to back at a speed of not more than three miles an hour, and then pull back onto the main line at the same speed, do you?

A. No, I do not.

REDIRECT EXAMINATION BY MR. RICH.

Q. As I understand you, when you came into the service of the company, the line had been located, surveyed and graded, practically completed to Pontotoc or very nearly so?

A. In December, 1903, yes, sir.

Q. How are you constructing this line, is it under a contract with the construction company?

A. Under contract with the construction company for a certain amount of bonds and stock per mile of completed road.

Q. What amount of stock and bonds per mile?

A. Twenty thousand dollars in bonds, and twenty thousand in stock.

Q. And the bonds bear interest at five per cent.?

A. Five per cent. per annum.

Q. You were asked just now if the sole additional cost of operating this line—if its location was changed, would not the increase of mileage, would there not be fixed interest charges and fixed costs of operation and maintenance thereon, growing out of the increased operation of trains, train mileage?

A. Nothing but the increased interest tax, which is not considered as a cost or considered in these figures as a cost per mile run.

Q. But would there not be other costs of maintenance of track?

A. Maintenance of track is included in the cost per mile run.

Q. The five per cent. interest charge would be an additional cost?

A. The additional cost, there is the cost per mile run for in increased mileage.

Q. Has this company a depot at Pontotoc, now?

A. Yes.

Q. What character of depot?

A. Why, I cannot give the dimensions. It is a station which we designate as our number one, erected at a cost of about thirty-two hundred dollars.

Q. Is it or not one of the best stations on your line?

A. It is one of the best, and the largest we are building at any town.

Q. How long has it been constructed and in use?

A. Since sometime during last summer. I am not positive as to the date.

Q. So far as you know, or since your connection with the company, has the town of Pontotoc, by its municipal authorities, or the people of Pontotoc ever offered you depot grounds?

(Objected to.)

A. Not to my knowledge.

Q. Or any right of way through the town?

A. Not to my knowledge. (The defendant objected to the question.)

Q. Well, now, you were asked about your arrangements at Decatur. Is it not a fact that the people of Decatur were offering you depot grounds all the time?

A. Yes, sir.

Q. In the town?

A. Yes, sir.

Q. And have provided you with depot grounds?

A. They have, yes, sir.

Q. And a right of way?

A. Yes, sir.

Q. Through the town of Decatur?

A. Through the town of Decatur.

ADDITIONAL EXAMINATION BY MR. FLOWERS.

Q. Mr. Dewey, I believe you said if you were forced to build a spur track down to the old depot site that it might put an annual interest charge on your company of something like fifteen hundred dollars?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. On what is that based? Do you mean to say that it would take fifteen hundred dollars a year to pay the interest on the money you would have to raise to construct that line down to Pontotoc and build a station there?

A. As stated, our arrangement with the construction company is to pay them twenty thousand per mile in bonds and twenty thousand in stock for each mile of main track and a branch completed and a mile and a half at twenty thousand a mile would be thirty thousand, and at five per cent. it would equal fifteen hundred interest and charges.

Q. Do you know how much extra cost it would be if you were to build your main line by the old depot site instead of on the route you have it?

A. I do not.

Q. Have you ever figured on that?

A. Our engineers have; I have not.

Q. You do not know whether it would cost any more?

A. I do not. That is purely an engineering matter.

Q. You stated a moment ago that the people of the town of Pontotoc had never offered you a right of way through the town. Have you ever tried to get a right of way through the town by the old depot site?

A. I have not, and to my knowledge the company has not.

Q. The people of Pontotoc have never refused to give a right of way?

A. We have never asked for it to my knowledge.

Q. They have never had occasion to offer one, have they, so far as you know?

A. I do not know that they have.

Q. Mr. Dewey, do you know how your company obtained its right of way through the town of Pontotoc where it is now being constructed?

A. No, I do not.

Q. You don't know whether it was donated or whether they bought, or got it by the exercise of the right of eminent domain?

A. A large part of it, as I understand it, was by eminent domain, by condemnation. I do not want, however, to make that as a positive statement.

Q. Mr. Dewey, in your figures which you have prepared, did you take into consideration that your company already owns the right of way and depot grounds down to and at the old depot site?

A. That is not material in the cost of construction.

Q. That is not an item to be taken into consideration?

A. Not under our contract with the construction company.

Q. I will ask you this, Mr. Dewey, did you take into consideration the fact that it would cost as much for the construction company to build that line down to the old depot site, since it has already been prepared and already graded, fixed for a railroad?

A. No, it is not already graded, prepared for a standard gauge line. It is immaterial whether the right of way is there or not. We would have to pay interest on it at twenty thousand a mile.

Q. You say you have a general contract with the construction company under which they have agreed to build a railroad for as many miles as you may determine upon, in the survey of this road without regard to the condition of the ground over which they have to build?

A. That is the idea, yes, sir.

Q. Mr. Dewey, did you pay that much for the work of broadening and standardizing that part of the narrow gauge line north of the town of Pontotoc, which is now being operated as a standard road?

A. Including the purchase price of the Gulf & Chicago road, yes.

Q. How much difference did that make?

A. I don't remember what the purchase price was for the Gulf & Chicago Railroad.

Q. Have you no idea as to those figures?

A. No, I have not.

Q. You have no idea then as to what it really cost you per mile to broaden and standardize that road?

A. That is, the construction company?

A. Yes.

A. Completed, it cost the railroad company the interest on $20,000 per mile of its bonds and its stocks.

Q. But the broadening and standardizing of that part of it north of the town of Pontotoc which has been completed cost you the difference between $20,000 and what the road cost you in the first instance?

A. That is the general idea, yes, sir.

H. S. JONES, being duly sworn on behalf of the complainant, tes tified as follows:

DIRECT EXAMINATION.

Q. What is your present occupation?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. About twenty years.

Q. What experience have you had in locating and constructing railroads and where have you had it?

A. Well, I have been almost constantly at it; in the west, with the Chicago, Rock Island & Pacific; in the south with the Illinois Central and the Mobile, & Ohio; in the north with the Pennsylvania and the C. H. & D., and I am now chief engineer of the Appalachicola and Northern Railroad.

Q. Did you at any time have any connection with the Mobile, Jackson & Kansas City and the Gulf & Chicago Railway Company?

A. I was Chief Engineer of the Mobile, Jackson & Kansas City Railroad.

Q. Between what periods of time?

A. I think I came here in May, 1901.

Q. Were you in the service of the Mobile, Jackson & Kansas City and the Gulf & Chicago Railway Company, when the line of the Gulf & Chicago Railroad Company was located through and by the town of Pontotoc?

A. I was.

Q. Did you supervise and direct the location of that line?

A. I did.

Q. About what time in 1903 was that line located?

A. I think it was the early part of June, 1903.

Q. Now, Mr. Jones, did you have any difficulty in locating a line there?

A. Well, we ran several lines to find the most economical line—to find the line that would be the most economical to build, and at the same time to operate and do business over, into the town of Pontotoc?

Q. In making those investigations, did you have the assistance and co-operation of the people of the town of Pontotoc?

A. I thought so, yes, sir.

Q. Just tell what occurred, as near as you can recall it. Who did you go there with, and under what condition?

A. I will have to begin to give you a narrative there—

Q. That's right; give the whole thing?

A. We started out on our preliminary survey and we landed in Pontotoc about a mile, I reckon, west of the town, outside of the corporation. Well, while it was the cheapest line to build, at the same time we didn't think we were complying with the law about coming inside the corporation, provided the town would eventually give us the right of way, and the people were very much dissatisfied with it, or anyhow, Mr. Merrill, the then President and myself, went to Pontotoc, and we met, as I suppose, representative people of the town, and they all talked that way, and we went out to where the preliminary line crossed and everybody, from the President to the citizen, concluded that that was too far out, that we must get in town closer.

Q. Now, that was the first line run?

A. That was the first line run, and we discussed the thing and they showed us—that is, I say "they"—a few of the citizens there showed us about where the corporation line was and I came up town with a Mr. Mitchell and some other gentleman. I think they called him Dr. Mitchell, and we passed right by this place which was eventually selected as a depot site.

Q. And the one now upon which the depot is built?

A. The one now upon which the depot is built, and these gentlemen pointed out to me, "Now this would be a nice place for a depot; it is nice and level." "Well," I said, "it may look level to you, but it would take a survey to develop it; I don't think it is very level, although it is a very nice looking place.

Well, we came back and my understanding was that then Mr. Merrill said he would have some surveys made, and in June I went up there and had three lines run; tried to get into the town and tie on to the old original line, and run down by the hole and the depot.

Q. By the old narrow gauge depot?

A. Yes, the narrow gauge depot. That was the first line run. Our first attempt was to get into the town as close as we could and to use the old narrow gauge depot site. That was our first attempt. Then we made four surveys. The third survey was the line adopted now. The fourth survey is another line that I didn't think there was much in, but I went there for the purpose of developing the country and seeing what there was in it. The result of all four of those surveys was the present location.

Q. Well, now, Mr. Jones, before this location was adopted and this line now being operated and finally adopted, did you have any meetings with the citizens of the town of Pontotoc?

A. Well, I did not attend any meetings, but Mr. Merrill, the President, went up there and attended some meetings. I saw some accounts in the newspapers where he had been there.

(Objected to.)

By Witness: I never went there after the first meeting.

A. As a matter of fact, meetings were held to discuss this location?

A. O, yes, sir, it was discussed, and meetings were held.

Q. How long were you in and around the town of Pontotoc before this location was finally made?

A. About a week, I guess.

Q. Were you talking with the people, the citizens—

A. Oh, I had done my talking before.

Q. I mean all the time?

A. Oh, yes. Yes, I met citizens there, but at the time that this survey was made I don't recollect having no more than just a friendly conversation with the people there.

Q. Now, Mr. Jones, all of that time, you were the Chief Engineer of these lines?

A. Yes, sir.

Q. Well, now, did any official body of the municipality of the town of Pontotoc, or any citizens, or body of citizens,

offer you depot grounds or a right of way through the town of Pontotoc?

A. Oh, no.

Q. You were familiar with the location of the old town of Pontotoc? That is, what is known as the old town, and the extended limits of Pontotoc, are you not? As shown by the official maps?

A. I have seen those maps, yes, sir. I am more familiar with the town as extended than I am with the old town.

Q. Now, Mr. Jones, are you familiar with the location of the old narrow gauge depot site?

A. Yes, sir.

Q. Upon which order of the Commission required the construction of a depot?

A. Yes, sir.

Q. That as I underrtand it, is outside of the old town of Pontotoc, and in the extended corporate limits?

A. Yes, sir.

Q. Where is your present depot location, that is along in the extended limits?

A. Yes, sir.

Q. Both depot sites are in the corporate limits of the town of Pontotoc and in the extended part of the town?

A. Yes, sir.

Q. Now, Mr. Jones, why did you not adopt as far as it went, the old narrow gauge line into Pontotoc?

A. Because it was impracticable—too expensive in order to extend it, and get out of the town.

Q. Explain why it was; explain fully.

A. Too many hills, and too many valleys, and it would require entirely too much work. It would have made the lines about three-quarters of a mile longer, and it would have been a burden on the traffic and a burden on the people who are building it, and eventually a burden on the community as well.

Q. Well, now what would it have cost to have constructed the line over the old narrow gauge grade through the town of Pontotoc, if it could have been constructed at all?

A. Well, to revise the old narrow gauge road, from where the present adopted line joins it, down to the end of the old narrow gauge road, I think it is sixty-seven hundred feet. There

were some one and a half to two per cent. grades on it. The lines would have all had to have been revised, the grades lowered and raised in order to make it conform to the grades adopted on the new line. They would have been the first thing to encounter. Then the next thing would have been the very heavy work on the line getting out, and in revising those grades; there were no depot grounds sufficient to do business with at the old site, and we made an estimate that in order to standardize the old narrow gauge road for that sixty odd hundred feet, and buy depot grounds, it would cost in the neighborhood of thirty thousand dollars, and a line to go out from the end of the old line and connect with the adopted location would cost in the neighborhood of fifty-three thousand dollars, making a total of eighty-three thousand dollars that the line by the way of Pontotoc old depot site would cost, a matter of little over three miles.

Q. Would or not the adoption of that line have affected your grades in the operation of your trains outside of Pontotoc?

A. It would not have affected them if we had made these grades and spent this money. If we had spent this money, it would not have affected the operation of the train, except to make them a little longer time.

Q. Well, you would have had to spend then about eighty-three thousand dollars, as I understand your answer, to make the grades in Pontotoc conform to the general scheme of grades?

A. Yes, sir.

Q. And it would have lengthened your main line about four-fifths of a mile?

A. Yes, it was forty-one hundred feet—that is what the distance is.

Q. Now, you say that you are familiar with the old narrow gauge depot site?

A. Yes, sir.

Q. The one mentioned in the order of the Commission—what size and dimensions of standard depot grounds?

A. The Mobile, Jackson & Kansas City have adopted a strip of land 250 feet wide and 2000 feet long as standard ground.

Q. Is that generally the standard with railroads?

A. Yes, sir, that is railroads that are being constructed at this time.

Q. Now, is Pontotoc such a place and its business such a character as to demand that much room?

A. Yes, sir.

Q. Well, now did the company, or either of the companies, own or have control of at that time, at the old depot site, sufficient land for that purpose?

A. No, sir.

Q. Well, now, it would have been necessary to have acquired what? What would we have had to take in the way of improvements and land at that point to acquire depot grounds there?

A. Well, immediately back of the old depot site there was a residence occupied by a man named Stafford, I think. Then there was an electric light plant and planing mill combined, that would have to have been taken, and part of the property of the Round Bale Cotton Gin Company. That is all on the Pontotoc side—the town side. Then there were two other cottages on the opposite side that would have to be acquired in that site.

Q. Have you made any estimate of what it would cost in money to have acquired that money?

A. Yes, sir.

Q. What would it have required in money?

A. About eighty-five hundred dollars to take those properties I have mentioned.

Q. Now, Mr. Jones, is that estimate based on your idea of the value of the property, or what a jury would give against a railroad company condemning it?

A. Well, part of it is based on my idea of the property, together with what a jury would give, and a part of it is based upon the statement of the owner himself, that he would not sell for less than five thousand dollars. I told him that I believed that if a man came and offered him forty-five hundred dollars cash, he would sell out. That was the electric plant and planing mill.

Q. Now, Mr. Jones, after your line was adopted through the town of Pontotoc, what quantity of work had been prior to the 12th day of January, 1904?

A. Well, to my best recollection, the work that would have to have been thrown away—

Q. But first, let's have what was done?

A. It would be ninety per cent. of it—you mean all along the line?

Q. No, I mean through the town of Pontotoc, necessary to get your line in there over your survey?

A. Well, I would say that ninety per cent. of the grading had been done.

Q. Then substantially all of the work except the laying of the ties and rail—

A. And bridging.

Q. And bridging had been done?

A. Yes, sir.

Q. Well, now, Mr. Jones, suppose today you were called upon to abandon your present location and construct a line through the town of Pontotoc, over the old narrow gauge line, what would it cost throwing away the work that has been done?

A. Well, I have already said that to build that three miles which it would require, to come around by the old depot site, would be worth eighty-three thousand dollars, and to throw away the work already done would be about twelve thousand more.

Q. I mean that done prior to the order, the 12th day of January?

A. Ninety per cent. as I said—twelve thousand more.

Q. It would be about ninety-six thousand dollars in round figures?

A. Very close to that.

Q. Are you familiar in a general way with the size of the old town of Pontotoc?

A. Well, it is very small.

Q. Have you examined maps with reference to it?

A. Yes, sir.

Q. Now, Mr. Jones, would it be possible, would it be a physical possibility without closing streets and destroying valuable improvements in the old town of Pontotoc to acquire a right of way and get depot grounds in the old town of Pontotoc?

A. It would not be possible to do that.

Q. Under any circumstances?

A. No, sir.

Q. Now, is that because of the physical condition, or the size of the old town of Pontotoc, or is it due to both?

A. Now, may be I did not answer that first question—the old depot site never was in the old town—

Q. I know, but I am asking you now about the old town of Pontotoc?

A. Well, if it was not in the old town of Pontotoc, you could not destroy any property in it.

Q. I am talking about going through there. If you went through there, is there any way to get depot grounds or a standard right of way through the old town of Pontotoc? I am not talking about the location of the old depot, but the location of the railroad, could you get into the old town of Pontotoc any way?

A. Oh, no. To get into the old town you would destroy several valuable improvements.

Q. Could you get any strip of ground in the old town 200 feet wide and 2000 feet long that would be available for this purpose?

A. If you had money enough you could.

Q. You would practically destroy the town?

A. Pretty near. The town wasn't much over two thousand feet long.

Q. Did you ever hear, during your incumbency as Chief Engineer, for these lines any offer to give you a right of way or depot grounds in the old town of Pontotoc?

A. Well, indirectly.

Q. I say, in the old town?

A. Oh, no—the old town, no, sir.

Q. Now, Mr. Jones, is there any other way, except by changing the main line to get into the old narrow gauge depot site with this line of railroad?

A. Yes, sir, you can standardize that spur track and back in and out.

Q. Now, how much spur track would you have to build in order to do that?

A. Well, the most economical route you could come down would be down the old narrow gauge road, and that is something over 6000 feet.

Q. A mile and a quarter.

A. It is between a mile and a quarter and a mile and a half.

Q. Do you know about what that would cost?

A. I gave you my estimate of thirty thousand dollars to standardize it. You would have to make it secure and safe to operate passenger trains down there.

Q. In that you include no cost of operation?

A. No, sir.

Q. Or maintenance?

A. No, that is the original outlay.

Q. The original outlay to construct the spur track?

A. Well, to construct the spur track and buy these depot grounds. If you were going to operate a depot down there, you would have to equip it in the same way as your main line. You would have to have depot grounds if you were going to do business there.

Q. How did the people of Pontotoc get from the old narrow guage depot to the business part of the town?

A. The means of locomotion—

Q. I mean what character of way.

A. Up and down a pretty good steep hill.

Q. How far was it, about?

A. Well, from the court house, I would say it was not much over a quarter of a mile.

Q. How far is the present depot from the court house?

A. It is about three-quarters of a mile.

Q. Well, what would be the effect of constructing a good modern highway from the court house to the new depot site, as compared with the old way of handling freight up that hill?

A. My opinion is that it would be very much better.

Q. Does the present situation materially increase the cost and inconvenience of the people over former conditions?

A. No, sir, not in my judgment.

Q. Mr. Jones, in surveying and locating this line was everything done that the engineers could do, considering both the interests of the railroad company and the convenience of the people of Pontotoc, to locate that line as nearly in town as possible?

(Objected to as leading.)

A. Yes, sir.

Q. Would it, in your opinion, have been possible for the old narrow gauge line to have been practically used if the narrow gauge line had been extended through the town of Pontotoc?

A. To get out you mean?

Q. Yes.

A. No, sir, it would not have been practical to operate it.

Q. Isn't it a fact, Mr. Jones, that to extend the present Gulf & Chicago Railroad Company's line through the town of Pontotoc, over the old narrow gauge line, you would, in order to get out, have to cut down a hill two and a half miles long?

A. No, sir.

Q. You say you would not?
A. No, sir.
Q. What would you have to do in the way of cutting down a hill?
A. Well, the line between—you mean the whole scheme, clear around the three miles of narrow gauge?
Q. I mean extending the narrow gauge through.
A. I think it is only a mile and a half long. That thing is made up of a succession of hills and valleys.
Q. I am not talking about the present line. You don't understand the question. But adopting that line and going through with your railroad—
A. Oh, well, no engineer would do that, you know.
Q. I am talking about what you would have to do if you did adopt it?
A. Oh, yes, you would, but then nobody would do that.

CROSS EXAMINATION OF MR. H. S. JONES BY MR. FLOWERS.

EXHIBIT "B" TO MR. KINCANNON'S TESTIMONY.

Q. Now, Mr. Jones, when did you say you did this work?
A. I think it was in the forepart of June, 1904.
Q. 1904?
A. 1903. I know I did it in June.
Q. Are you sure about the dates?
A. 1903. I am sure about that now.
Q. How long had you been with the Mobile, Jackson & Kansas City?
A. Since May, 1901.
Q. Who employed you to do this work?
A. The Mobile, Jackson & Kansas City.
Q. Did the Gulf & Chicago Railway Company have anything to do with it?
A. Not that I know of.
Q. You were doing your work for the Mobile, Jackson & Kansas City line, so far as you know?
A. Yes, sir.
Q. Well, you say now you went up there and citizens were with you a good part of the time.
A. A great many of them were there, not at that time, but sometime in May.
Q. At the time that you did this work, making three or four different surveys, were citizens with you then?
A. No, sir.
Q. When you were there in May, what were you doing?
A. I went there to meet a delegation, with the President of the road. I think that meeting was made by appointment.

Q. With the railroad people.

A. Yes, sir.

Q. And citizens?

A. And citizens of the place.

Q. At that time was there any line agreed upon?

A. No, sir.

Q. When you went there and made these three or four different surveys, you went solely as a civil engineer and surveyed your lines trying to find the best route through the community?

A. Yes, sir.

Q. And when you say that some citizens of the town, one Mr. Mitchell and others, suggested the route which you adopted, how many other citizens were along at that time?

A. I don't think there was but four in our party. There must have been fifty all told out at the preliminary line, the first survey.

Q. Was that in May or June?

A. That was in May, but I think Mr. Mitchell and Mr. Morgan and—well, I could describe the man to you, but I could not give you his name—and myself.

Q. Four in all?

A. I think there were four of us, and we walked two and two.

Q. Did these men first call your attention to the line which you adopted?

A. Yes.

Q. Acting upon their suggestion, you surveyed it and adopted it?

A. No, sir, that was the third line I tried.

Q. You tried it at their suggestion?

A. Yes. Well, no, I did not try it at their suggestion.

Q. You stated in your examination in chief that this line was suggested to you by Mr. Mitchell and others?

A. Yes, sir.

Q. But the suggestion had nothing to do with your trying that route?

A. No, sir.

Q. You would have tried it anyhow?

A. I would have tried it anyhow.

Q. So anything that the citizens might have said to you had nothing to do with your trying and adopting that as the most practicable route.

A. Our first aim was to get into the town close up. Our first line ran right by, in fact connected up with the old line, and we kept working west. The second line was a little further west than the first line. The third line was on this present location.

Q. Well, anything that the citizens said to you had nothing to do with your selecting that particular line?

A. Oh, yes. Of course we considered the suggestion of any man who would be interested in the upbuilding of his town; the railroad is interested in the upbuilding of the town.

Q. Did you adopt this line as the most practicable one simply because it was that, according to your own judgment, or because some of the citizens of the town suggested this line?

A. Primarily because I considered it the best line, and secondarily because I considered that the citizens would accept the line.

Q. That was the best line you surveyed?

A. Yes, sir.

Q. According to your judgments, it was the best one?

A. Yes, sir.

Q. And independent of anything that any citizens might have said, that is the one you would have adopted?

A. Yes, sir.

Q. So, really any suggestion from the citizens had nothing to do with your final determination upon that line, you would have adopted it without any suggestion, after you discovered it?

A. Yes, sir, I believe I would.

Q. Now, how far is it, did you say, from the intersection point north of the town—by intersection point I mean where the line adopted and the old line intersect—to the point south of the town, where the line you say you would have to have adopt if you should be compelled to go by the old site, would intersect the line which you adopted—how far is that?

A. You mean how long is that line by way of the depot—of the old depot site?

Q. I mean how long is it by the way of the route which you adopted?

A. A little over two miles and a quarter.

Q. How far is it by the way of the old depot site along the most practicable route you discovered by way of the old depot site.

A. A little over three miles by way of the old depot site.

Q. Then according to your estimate, it would compel the company to build three quarters at least of a mile more if they were compelled to go by the old depot site?

A. Yes, sir.

Q. Then they have decided to build along the route which they adopted?

A. Yes, sir.

Q. Do you know, Mr. Jones, what it has cost to build that line between those two points, or what it will cost to build it?

A. It has cost $48,000.

Q. Does that include the right of way?

A. Yes, sir.

Q. Does it include the new depot?

A. No, sir.

Q. Do you know what that new depot and grounds cost?

A. No, sir.

Q. Have you ever seen the depot?

A. No, sir.

Q. Do you know how the company obtained the right of way along that route between those two points?

A. I think by condemnation proceedings against Mr. Warren, and I believe they purchased the balance of it.

Q. Does this estimate of $48,000 for construction include those expenses also?

A. Yes, sir, the $48,000.

Q. Does the estimate of the $48,000 for the construction of the road between those two points embrace every item except the building of the depot?

A. Yes, sir, and the laying of the side tracks. It includes the grading of the side tracks, but not the laying of the side track. Only the laying of the main line.

Q. Well, in your estimate of the cost of building into the old depot site, you said it would cost thirty thousand dollars, I believe, to build to the old depot site, and construct a depot there?

A. No, sir.

Q. What did that estimate embrace?

A. That embraced the raising and lowering of the present grade, building new and heavier bridges, the relaying of all the track with seventy-pound rail; requiring additional depot grounds and everything except the building of the depot.

Q. That item is left out of both estimates?

A. Both estimates, yes, sir, and the laying of the tracks, that is left out, too, but the grading of the side track is included.

Q. Now, how many owners of private property would you have to deal with to get a depot site at that place?

A. Well, I assume there was about seven or eight.

Q. Did you make your estimate as to the value of the property belonging to each of these?

A. Partly so, and the other part was by the way juries give to the railroad companies when you condemn.

Q. Do you remember what your estimate of all that was?

You spoke of one concern that would require $8,500?

A. Yes, sir, I can itemize it: $1200 for Stafford's house, I think, $4500 for that electric plant and planing mill; $800 for the back end of the cotton compress, and $2,000, a thousand dollars each for some houses across the track; that makes up $8500, I think.

Q. Your estimate of the $8500 embraces the several extra items of expense, which you think the company would have to go in purchasing additional grounds?

A. Yes, sir.

Q. At the old depot site?

A. Yes, sir.

Q. And it is based upon the assumption that it would locate its depot at the very same place?

A. Yes, sir.

Q. Where the old depot stood?

A. Yes, sir—that would be in the middle of the street, though.

Q. Now, Mr. Jones, did you consider in the proposition as to locating the depot at some other place along that route by the depot site instead of right at the depot?

A. No, sir.

Q. You did not consider it?

A. Never considered it at all.

Q. You did not try to find any other place at which it would be practicable to locate a depot?

A. No, sir.

Q. Now, after you leave that old depot site going south, how far is it along the most practicable route that you could find, to which you would intersect the line which you adopted?

A. A little more than a mile and a half. It is ninety-six hundred feet, I think—almost two miles—a little more than a mile and a half.

Q. Well, what is the character of the ground over which the track would have to be built between the old depot site and where it would intersect your adopted line? I would like for you to tell us in detail, if you have the information at hand, beginning at the old depot site and going south, just what the character of the ground is over which the road would have to be constructed?

A. The first thing is a small valley that the railroad is near the bottom of—

Q. How far would you travel in that valley?

A. Oh, I couldn't give you all those details, for a mile and a half to two miles. I couldn't travel up one hill and down the other—

Q. Just give your best estimate.

A. Well, I just can't give you an estimate. I can furnish you the profile and show it to you.

Q. Have you that profile?

A. Yes, sir.

Q. Can you not look at that profile and give us this information?

A. We run across a valley from the end of the spur track 600 feet, two fifty of a cut—

Q. How deep would it be required to make that cut?

A. Twenty-two feet.

Q. Just proceed.

A. Then a branch forty feet wide, that is seven feet deep, another cut that is two hundred and seventy-five feet long and twenty-one feet deep; then across a valley six hundred and fifty feet long, twenty-five feet deep; twenty-five feet you would have to make an embankment; then a cut one hundred feet long, thirteen feet deep;two washed places seven feet and ten feet deep and you strike another cut about nine hundred and seventy feet long and twenty-nine feet deep, and you strike a valley nine hundred feet long and twenty-six feet deep; you then strike another valley six hundred and fifty feet long and twenty-nine feet deep; you strike another cut five hundred feet long and twenty-three feet deep; a slight hill two hundred feet long, two feet deep; another cut seven hundred feet long, sixteen feet deep; you strike a valley fifteen hundred feet long, twenty-seven feet deep; another valley seven hundred feet long and nineteen feet deep; and then a cut twenty-three hundred feet long, seventeen feet deep; a valley two hundred and fifty feet long and ten feet deep; a cut that is three hundred feet long and seven feet deep.

Q. When you say a cut is twenty feet deep, you mean that that is the deepest place, do you not?

A. I have said so, yes.

Q. You have not given the average depth of the cuts or the average height of a fill or an embankment.?

A. No, sir.

Q. If I understand your figures correctly, your estimate is that in the beginning it would cost the company thirty-five thousand dollars more to build by the old depot site than on the route which they adopted?

A. Very close to it. The difference between eighty-three thousand and forty-eight thousand.

Q. If the citizens of Pontotoc should provide a right of way and depot ground through the town of Pontotoc up to the old depot site and including the site, this difference would be reduced eighty-five hundred dollars, would it not?

A. Yes, sir.

Q. Leaving the difference, twenty-six thousand, five hundred dollars. Please state whether in your estimate of fifty-three thousand dollars for construction of the road along the most practical route, you discovered, from the depot site to the point where such line would intersect the adopted line, embraces the estimated cost of procuring a right of way?

A. Yes, sir.

Q. You made no investigation to find out what the actual cost of such a right of way would be?

A. Only in inquiring about the price of that electric light plant and planing mill.

Q. As I understand you, this electric light and planing mill would have to give up some of its property for depot grounds; is that correct?

A. Yes, sir.

Q. That is your estimate of procuring the right of way from the old depot site along to where that line would intersect the other line?

A. Two hundred dollars an acre.

Q. And how many acres?

A. Twenty.

Q. Then if the right of way should cost nothing from the old depot site to the said point south of the town of Pontotoc where that line would intersect the adopted line, then the difference in the construction of the road between the said two points would be reduced according to your estimate, to twenty-

two thousand five hundred dollars, would it not?

A. No, sir. No, sir. That four thousand dollars is on the extended line south of Pontotoc. You would take that off of the fifty-three thousand dollars.

Q. I took it off of this difference—it is the same thing, the difference in the cost of the two lines?

A. Yes, sir; that's right. I answer that question, yes.

Q. Mr. Jones, was it your understanding that your line adopted by you would be adopted by the construction company or by the Mobile, Jackson & Kansas City?

A. Yes, sir.

Q. By which?

A. By the Mobile, Jackson & Kansas City.

Q. Were these men at work at that time?

A. The builders at the time of the location—

Q. Of this line; were they at work on some other part of the line?

A. Of the Mobile, Jackson & Kansas City?

Q. Yes.

A. Yes, sir.

Q. Do you know anything of that contract with the Mobile, Jackson & Kansas City?

A. No, sir.

Q. You don't know what that contract is?

A. No, sir; I never saw it.

Q. Who passed upon your work and determined whether your lines would be adopted?

A. I don't know as anybody directly passed upon it. It was my business to make the location.

Q. Was your action final, as you understood it?

A. Yes, sir; it was approved by the management. I believe they adopted it and built on it.

Q. You had nothing to do with the construction company in making your surveys and reports?

A. No, sir.

Q. You did not know them in the business?

A. No, sir.

Q. And in every instance, it is true, is it not, that the line that you surveyed and adopted as the most practicable

one was accepted by the company and the road was proceeded to be built on it?

A. Yes, sir.

Q. Were you ever instructed by the railroad company for which you were working to get a line south from the old depot site, if such practicable line could be found?

A. I will say, no, there was not. The chief engineer of a line is an arbitrator. He has his instructions to make a survey from A to Z. He is skilled in certain economics in railroad construction; he knows that the railroad is going to be built; it is his duty to build that line as cheaply as possible and to get all the tonnage there is. Now that is all the instruction he gets. Now, then, the only instructions that the party in the field gets from the chief engineer, and I, as Chief Enginner, gave the locating engineers instructions to use the Gulf & Chicago Railroad if possible, to get out of Pontotoc if possible on the Gulf & Chicago Railroad. Now, those are the instructions that they got. You see each department is to itself, the executive department and the others, and the Chief Engineer had control of this department.

Q. But in this case you had no locating engineers?

A. Yes, sir.

Q. I understood you did this work yourself?

A. I supervised it.

Q. You were present when it was done?

A. Yes, sir.

Q. Had you been instructed by the Mobile, Jackson & Kansas City Railroad Company, or by any officer of that company, to get a practicable line out of Pontotoc from the old depot site south, if possible?

A. I was an officer of the M. J. & K. C., and gave the instructions myself.

Q. Please answer the question, whether you had received such instructions yourself from any officer or governing board of the Mobile, Jackson & Kansas City?

A. No, sir.

Q. And in giving those instructions to your men under you, you did it because you wanted to use that line, if possible, if it would reduce the building cost of the railroad?

A. Yes, sir.

Q. In other words, in giving such instructions to the men under you, you did not do it because your employer or your company had instructed you to have that line located south from the depot to the town of Pontotoc, but because in your own judgment you wanted to utilize that road which had already been built, in a way, to the old depot site at Pontotoc?

A. The railroad company employed me to use my judgment.

Q. The company did not point you to the old line, to the depot site, or instruct you in any way to try and get a route south from the old depot site?

A. No, sir.

Q. Did you have authority from the railroad company to accept the right of way for depot grounds from the citizens of Pontotoc for the line through that town?

A. If it had been offered me, I could have accepted it in the name of the company.

Q. Would your action in that regard have been final?

A. Yes, sir.

Q. Could you, in your capacity as Chief Engineer, have bound the company to accept the right of way and depot grounds through the town of Pontotoc?

A. I believe I could; I believe it would.

Q. Does the Chief Engineer generally have such authority?

A. He is an officer of the company, and if he accepts it for the company as such, I believe he would be bound to it—the company would be bound by it.

Q. The chief engineer is customarily clothed with such authority in acting for his company on the one side and the people of any municipality on the other, is he not?

A. Well, that sometimes gives him the authority, sometimes it is delegated to a right of way agent, and sometimes it is in the office of the General Counsel.

Q. Mr. Jones, I believe you say a civil engineer is an officer of the corporation, is he not?

A. The chief engineer is an officer of the corporation.

Q. Did you ever have your attention called to the fact before you went there to do this surveying, that the Mississippi Railroad Commission, when it was asked to ratify the consolidation of the Gulf & Chicago Railroad Company and other corporations, into the Gulf & Chicago Railway Company stipulated

that if the consolidation should be ratified, then the old narrow gauged line from Middleton, Tennessee, to Pontotoc, Mississippi, would be broadened and standardized and made a part of their line?

A. No, sir.

Q. You never took that fact into consideration in locating this line through that community?

A. No, sir.

Q. No officer of the corporation and no one representing the corporation ever called your attention to that fact?

A. No, sir.

Q. When did you first hear of that?

A. When you just now told me.

Q. You never heard of it before this examination?

A. No, sir.

Q. Please state whether anybody besides yourself representing the company had anything to do with locating this line through the town of Pontotoc?

A. If they did, I didn't know it.

Q. You acted under full instructions and no one representing the company took part with you in locating this line through the town of Pontotoc?

A. No, sir.

Q. Mr. Jones, did any officer of the company, or any one representing the company before you went to Pontotoc to do this surveying, call your attention to the fact that when that narrow gauge road was built into the town of Pontotoc to the old depot site, it was understood between the company building the line and the citizens of Pontotoc that a right of way and depot grounds were to be donated, with the understanding that the depot should be built where it was built, and that certain citizens of the town of Pontotoc paid said Railroad Company five thousand dollars in cash in consideration of the company locating the depot at the old site?

A. I heard that statement contradicted by one of the people that subscribed to the fund.

Q. Did your company, or any one representing your company, call your attention to that fact, instruct you or suggest to you, that you take that fact into consideration in locating this line through the town of Pontotoc?

A. No, sir.

Q. You never heard any suggestion of it from your company or from any one representing your company?

A. No, sir.

Q. Then, if I understood you correctly, you went to the town of Pontotoc and located that line just as if no line had ever been built?

A. No, sir.

Q. Did you, in locating the line, which you at last adopted, from the point north of the town of Pontotoc, where it leaves the old line, take into consideration at all, that the line had once been located down at the old depot site?

A. O, yes, sir.

Q. Did that influence you in the location of your line from there south?

A. When I first went there, I wanted to follow the entire line, to use the whole thing. Of course, it had its influence. I wanted to adopt the line down by the old depot site, if possible.

Q. But you located the line at last at the very place where you would have located it, if that mile and a quarter or mile and a half which was abandoned had never been constructed, did you not?

A. That was the result of it, yes.

Q. Then in locating your line from that point south, you were uninfluenced by anything that had taken place before that, so far as the result is concerned?

A. Absolutely uninfluenced either by the company or by the citizens.

Q. Did you ever at any time offer or suggest to any of the citizens of the town of Pontotoc that you would run that line through the old town at any place, provided a right of way would be furnished?

A. No, sir.

Q. Did the citizens of the town of Pontotoc have any occasion, while you were doing this work, to make you a tender of any grounds which seemed to be practicable on which to build the road through the town of Pontotoc? By practicable, I mean which seemed to you to be a practicable route?

A. They had plenty of opportunity. I was there about a week.

Q. I mean did you discover any practicable route which you would have adopted if they had made a tender of the grounds, on which to build a road and depot?

A. They would first have to discover the grounds.

Q. You did not discover any such grounds?

A. No, sir, except as finally located.

Q. Then, you did not fail to run the line through the old town of Pontotoc, because of any failure upon the part of the citizens of the municipality itself, to tender such grounds?

A. No, sir.

Q. You did not suggest to the citizens of Pontotoc any practicable route through the town provided such grounds would be donated?

A. No, sir.

REDIRECT EXAMINATION.

Q. You were asked if you tried to find a way to the old narrow gauge line? Did you inspect the narrow gauge line with a view to trying to utilize it?

A. Yes, sir.

Q. Did you discuss the propriety of using it or not, with any citizens of Pontotoc?

A. No, sir.

Q. Did you at any time during the summer of 1903, after the location of that line hear any protest from the people of Pontotoc about the adoption of it?

A. No, sir.

Q. How long did you remain as Chief Engineer of the M. J. & K. C. and Gulf & Chicago Railroad companies after the adoption of the line?

A. About three months, I guess.

Q. Is it not a fact that you never heard of any objections to this located line until the Commission made some order about building the depot at the old site?

A. That is the first I ever heard of it.

Q. And as a matter of fact, did not that relate to depot facilities of the narrow gauge line rather than have any particular reference to the location of a new line?

A. Well, I only heard that as gossip. I couldn't say. I heard it talked about.

Q. Well, as I understand you, you went to Pontotoc with a view of locating this line, for the purpose of constructing and operating through the town of Pontotoc, a standard gauge railroad, and you also had in view the use of the narrow gauge line as a part of the main line of the proposed standard gauge railroad?

A. Yes, sir.

Q. That is a fact, isn't it?

A. Yes, sir.

Q. And that you undertook to use the narrow gauge line as a part of the main line of the proposed standard gauge line, both with a view of economy for your company, and having in view the convenience of the people of the town of Pontotoc?

A. Yes, sir.

It is agreed between the Solicitors for the Complainant and the Defendants, respectively, in the above stated cause, that the bill filed on behalf of the State of Mississippi, by the Railroad Commission against the Mobile, Jackson & Kansas City Railroad Company, et al., in the Chancery Court of Pontotoc County, and removed to the Federal Court, may be read as evidence on the hearing of this cause.

CROSS-EXAMINATION BY MR. RICH.

QUESTION. Mr. Kincannon, when was this application for consolidation made?

A. It was made in, if I am not mistaken, on July 6th.

Q. That is, when the order was made, it was made prior, just prior to that?

A. Yes, just prior to that.

Q. At all events, in July, 1903?

A. Yes, sir.

Q. You knew nothing at that time about any questions of abandoning the old depot or changing the line?

A. Well, no; there was the question of abandoning the depot and of changing the depot had been rumored, but nothing in an official way.

Q. There was no discussion about that at that time in the Commission, that order was passed in a formal way as such orders are, upon the idea that these lines were not competing?

A. Yes, sir.

Q. As a matter of fact, was there any discussion about it beyond that by the Commission?

A. Well, yes, there was a discussion by the Commission and by yourself. You were present and discussed the matter.

Q. With reference to the competition?

A. Yes, with reference to the advantages that would accrue to this—

Q. Section of the country?

A. Section of the state.

Q. Wasn't that discussion in the application, and not by me?

A. Well, as I recall it, it was discussed in the application and by you. You read the application, if I am not mistaken.

Q. Well, wasn't the application presented by Col. Faulkner and Mr. Gooddell, in fact? I subsequently came there and read the order, and you were engaged in other matters, and I simply called the attention of Mr. McKinnis, the President, to the fact, and he said: "Go over it and write the order"—that he weren't competing lines.

A. I understood that you were present at the time the application was made.

Q. I am talking about the presentation of the application. I was there when the order was made, and wrote the order myself.

A. That was the time.

Q. Now, Mr. Kincannon, at the time the order was made, don't you know that prior to that time, in June of the same year, there had been surveys made by engineers in the employ of the Mobile, Jackson & Kansas City Railroad Company, with a view to locating its line through the town of Pontotoc, and there had been one or more public meetings called by the citizens of the town of Pontotoc, with the view of discussing some proper location of a depot, other than that of the old narrow gauge site?

A. I knew there had been some meetings, and some surveys run.

Q. Well, did you or not, know that those meetings were held with a view to determining the final location of a depot other than the old narrow gauge station?

A. I knew that there was the question of locating the

depot and of agreeing with the people of Pontotoc as to the location of the depot so to be constructed.

Q. Well, didn't you know that that matter had been determined, so far as such things can be determined, by public agreement between the citizens of Pontotoc and the railroad officials?

A. No, sir; I did not.

Q. Now, you say you made several visits to the town of Pontotoc prior to the making of this order on January 12th, 1904?

Well, before I get on to that, did not Col. Falkner say to you in a public meeting with the Railroad Commission, that that matter had been settled by agreement?

A. Well, I don't remember if he did.

Q. Well, now, don't you remember that that was stated to you by Col. Faulkner, and that you said that you would come up and look into the situation yourself, and told him that you would advise him of the day of your coming?

A. No, I don't remember that. I remember that I came here, and I remember, so far as having heard that there was some settlement of this concern, and from the railroad site if I heard it —I remember hearing that from Col. Merrill, just in a conversation. I don't remember the conversation I had with Colonel Faulkner.

Q. But wasn't that in the meeting of the Railroad Commission when the matter was under formal discussion?

A. No, I don't recall any such meeting.

Q. Now, Mr. Kincannon, in your various visits to Pontotoc, who did you confer with about the matter?

A. Here?

Q. Yes, sir.

A. Why, with the people here generally. I remember one of the meetings that we had here, and I came, I know Mr. Faulkner was to come here, and in order to come here with me, if I am not mistaken, you wrote me in regard to coming here? (Addressed to Colonel Faulkner.)

COL. FAULKNER: Wired me.

A. (continued). Wired me in regard to coming here, under a request that you be notified if I did come.

Q. Possibly we can refresh your recollection about the question. I asked you there and you promised to notify me. I

was present at your meeting, and invited the Commission to come up here in a body, and informally Captain McKinnis and yourself agreed to come. Then as I requested that I be notified when you came—

A. Now, I remember that you—

COL. FAULKNER. You promised to notify me. The notice came that you were here at New Albany. I could not possibly come here then, so I wired you, and wired to John T. Murray and he came here. Perhaps that will refresh your recollection.

A. I remember very well that you requested to be notified, and I remember that I agreed to notify you; but I remember that I did notify you by wire a day or two before my coming, or before a day before, at Oxford.

COL. FAULKNER: I didn't get that.

A. Didn't you? I wired you or possibly wrote you.

COL. FAULKNER: I did get a wire from Morgan, but not from you, requesting him to notify me, and that was the time when I said he and I could not come here.

Q. Now, Mr. Kincannon, you were asked when the railroad company ever applied to you for permission—I say you, I mean the Railroad Commission—for authority to change the location of this depot?

A. Well, they never did apply—

Q. Well, under what statute, or what law, or public procedure, does the Railroad Commission of Mississippi claim authority to regulate the changing of depots in the same town?

(Objection.)

Q. Isn't that a matter determined entirely by public convenience and public necessity?

A. The question—

Q. The location of the depots, the change of location of the depots in a town?

A. Well, my understanding is that there is no depot can be abandoned without one being established.

Q. That is not my question. I say change of location.

A. Well, the location can't be changed, in my opinion, without the authority of the Commission—without the consent of the Commission.

Q. Does the Railroad Commission claim to have any control over the abandonment or non-abandonment of railroads

already established?

A. Well, yes, they have control over railroads.

Q. I mean over this particular one abandoned?

A. Yes, sir; we claim that.

Q. That was not my question. I say the abandonment of parts of lines already established?

A. Yes, we claim to have authority over that.

Q. Well, under what law or regulation?

Mr. Fletcher here remarked that he objected to all of this manner of examining.

A. Yes, under the general law giving us power to control railroads.

Q. Did you ever have such an application made by any railroad since you have been a member of the Commission in six years?

A. To abandon part of the line?

Q. Yes, sir.

A. No, I don't believe I have known of any part of a line abandoned before.

Q. Well, now, Mr. Kincannon, you say during your various visits to Pontotoc, you have conferred with the people generally. As a matter of fact, have not your conferences been limited to those who were opposing the change of the line?

A. Well, in a general way it has, because I found very few people who were favoring the removal of the depot. My visit at each visit I have made, I have mixed with the people generally, and I find that the sentiment here has been decidedly in opposition to the change of the depot. The time I came here with Captain Faulkner was coming, and could not be here, and Mr. Money was here, there was a large body of people that met in this courthouse and discussed the matter, and it was claimed that the citizens of Pontotoc were opposed to this removal of the depot.

Q. Mr. Kincannon, have you ever, as a Railroad Commission, or as an individual, had any estimate or comparative estimate of the costs of constructing these various lines?

A. No, sir; I have never had any estimate of that made.

Q. Have you never considered the interest of the Railroad Company in that regard—I mean considered the increased cost, both of construction and operation?

A. Well, no, I have not considered that the question of cost should have any part to play in the abandonment and withdrawal from a town after you have once gotten into it.

Q. So, as a matter of fact, the interest of the railroad company has not been considered by you at any stage of the proceedings?

A. O, yes, the interests of the railroad company have had such consideration as I thought they deserved.

Q. You say you did not take into account any question of the cost?

A. No, I did not take into account the question of the cost. I don't know what the cost would be.

Q. Isn't that the, practically the sole interest of the railroad company in the construction and operation of this line, to do it as economically as possible and to operate it as economically as possible? Isn't that the only interest of the railroad company that you could consider?

A. Possibly so.

Q. And that wasn't considered at all?

A. No, in this particular matter it was not. It was considered, the interest of the railroad company was considered along in connection with the interest of the people.

Q. Well, in what regard was it considered, if the question of cost was not considered?

A. Well, the question of the interest of the railroad company was considered as to whether it was, as to whether it would work a greater hardship on the people than it would on the railroad company.

Q. How could you determine that question without determining also what it would cost the railroad company to construct and operate its line?

A. Well, it was just the question, from my point of view, that the question of cost could not be so great to the railroad company that would justify the removal of this depot and the destruction, as I believed would come from it, of this town.

Q. But you determined that without ascertaining any fact with reference to the cost?

A. To the cost? No, sir; further than the testimony that was given.

Q. Now, Mr. Kincannon, doesn't the statute authorizing

you to deal with the location of depots, imperatively impose upon the commission the duty of determining that question, the question of the convenience of the people and the interest of the railroad company?

A. Possibly so.

Q. Well, that is a fact, isn't it?

A. Well, there is a law to that effect.

Q. So, then, in determining the location of this line, and this depot, that statute was not obeyed by the Commission?

Mr. Fletcher here desired to be understood that he objected to any question calling upon the witness to construe the law.

A. The question of the cost to the people and the loss that would come, all of that was considered together, and it was not considered that the cost to the railroad company could be of such magnitude that it would justify the removal of the depot after it was once established.

Q. Well, now, Mr. Kincannon, did you estimate the cost to the people, and how did you go about that?

A. Well, that was largely speculative, of course. I understood it was a question of judgment, of course, that the removal of this depot over there would practically result in the establishment of a new town there and the abandonment of this property —this town.

Q. Well, has that been the effect of establishing it there?

A. Well, it hasn't been established there yet.

Q. Well, since it has been operated in the place, what has been the effect along that line?

A. The effect has been very disastrous to this town.

Q. Well, now, will you explain fully, that is, what I want to get at, I just want to get at the disasters that have fallen upon Pontotoc in consequence of that establishment of the depot at that point?

A. Well, the possible disaster is too strong a word there. It has been very expensive to the town in the way of handling their freight, the additional expense, and the expense of hauling the cotton, the inconvenience and annoyance of being transferred from this part of the town to the train from the train over there. Of course, that was not entirely the matter we considered at the time that I decided that it would be improper to authorize the changing of the depot. The thing that I considered was that the

town would be built up over there, and this part of the town would be abandoned and this property practically destroyed. My opinion is, that wherever that depot is, if it should ever be established there, that that would be the result.

Q. Well, now, you did not then consider the expense to the people or the expense to the railroad company, it was just your fear?

A. O, I considered the whole question, of course.

Q. Well, I want in some detail to get at what in the aggregate made up your opinion. Your chief fear would be that the old town would be abandoned and the new town built up near the site of the new depot?

A. Yes, that was it—the convenience of the people here—I considered that was a very great inconvenience.

Q. And that was all?

A. Yes, sir, that was all.

Q. What has been—what change has been wrought, Mr. Kincannon, in the interim since the depot was constructed at the new site and the present time, so far as you know? Has anybody moved out of the old town?

A. No, no one had moved out of the old town, now. I don't think there was anybody that considered the depot has been located there.

Q. Do you know to what extent the expense of handling freight and passengers has been increased?

A. Well, not accurately I don't. I know it has been a considerable expense.

Q. Well, would or not any additional trade territory be opened up at Pontotoc by the operation of this line?

A. Which line?

Q. I mean the Mobile, Jackson & Kansas City from Mobile to Middleton, Tennessee?

A. I think not.

Q. Well, is it your opinion that the construction of that line under any conditions would be disastrous to Pontotoc?

A. I think the line as operated through would cut off some of the trade that formerly came to Pontotoc.

Q. So there is no good to Pontotoc to come out of the construction of this railroad?

A. Well, there is an advantage, of course, to any town

to have a through line, broad gauge, standard gauge, road at this, that reaches through to different markets.

Q. Would it not be to the advantage of Pontotoc to have this line operated today through?

A. I should think it would if it could be done lawfully.

Q. Would it not be also to the advantage of the railroad to have it done?

A. Well, I am not prepared to say about that, but I should think so.

Q. Can you show any condition in which it would be to the disadvantage of the railroad company or the people of the town of Pontotoc not to have it?

A. Well, I imagine that to have it operated contrary to law would be hurtful to Pontotoc as well as the entire State —Pontotoc along with the rest.

Q. If the law was to be enforced after it was ascertained that it was—definitely and properly—that it was violated?

A. Well, that has been definitely settled.

REBUTTAL EXAMINATION BY MR. FLETCHER.

Q. Mr. Kincannon, you were asked there with reference to whether the town would be hurt by the completion of the railroad—would the attitude of the railroad towards the citizens of the town, also whether it was hostile or friendly, and the public policy adopted by the railroad as to whether they were trying to suit the public convenience or not have any effect upon the benefit or disadvantage that might accrue to the town

A. I think so.

Q. Now, you said on cross examination there, that when you visited this town there was a public meeting here held at the court house?

A. Yes, sir.

Q. Was notice given to the citizens that the Commission would consider this matter at that time or not?

A. Yes, sir.

Q. What do you say was the predominant sentiment among the people here with reference to changing the depot?

A. It was against the change.

Q. Now, in regard to this question of cost to the railroad at what time during that investigation and discussion of this

matter has it been represented to you by the railroad that a construction of a line south from this depot was impossible, if at all?

A. Well, it has never been stated that it was impossible.

Q. As I understand it, the only question that they have insisted on would be an increased cost?

A. Yes, sir.

Q. Now, at the time this matter was called to the attention of the Commission and the Commission took the matter up with the railroad company and the railroad officials, was that depot over there or not constructed at that time—at the the time it was first officially called to the attention of the Commission?

A. It was not constructed, as I remember.

Q. What part, or proportion of the work of this line of the railroad from the point where the old line narrow gauge diverges from the line down to, say the first trestle, was constructed at the time the Commission took cognizance of this matter?

MR. RICH: Mr. Fletcher, that is entirely new matter.

MR. FLETCHER: Well sir, I will let you cross him on it.

Q. (continued) If you are able to state?

A. Well, I am unable to state just what proportion of it was constructed, Mr. Fletcher. I know they had done some work up there towards the depot.

Q. Well, Mr. Rich asked you what disadvantages had come to the town by the location of the depot over yonder. I will ask you what part of the time since they moved their depot has there been when this question has not been in litigation; in other words, how long was it after they moved the depot until the inception of this litigation about the depot?

A. Well, it was practically at the same time, if I am not mistaken.

Q. What was the beginning of this litigation (that may be new matter to Mr. Rich possibly)?

A. Well, it was when they abandoned this—gave up this depot; the effort to abandon the depot was the cause of the litigation, and it began when they decided to do that, as far as I understand the question.

Q. Yes, sir. Now, the order of January 12, I think that was the correct date, with reference to the question of the depot

sites along there by the Commission—how long after that order until the litigation began?

A. Well, I don't remember exactly how long. I believe that the first step that was made after that was an injunction filed against the Commission.

Q. In the federal court?

A. In the federal court. Exactly the date of it I am not able to say.

SURREBUTTAL EXAMINATION BY MR. RICH.

Q. You don't remember when this depot was constructed Mr. Kincannon?

A. No, sir, I don't remember exactly the date, Mr. Rich.

Q. We got into the depot sometime in May or June, wasn't it, about 1905 or 1904?

A. No, you got in before that.

Q. 1904?

A. Yes, it was in 1904—sometime in the spring of 1904, if I remember corerctly.

Q. Yes, sir, last year. Now, Mr. Kincannon, your bill in this case was filed—

MR. FLETCHER: In August.

Q. Late in August, too, wasn't it?

MR. FLETCHER: I don't remember. I think it was early in August.

Q. In August—filed August 3. In August, 1904, Mr. Kincannon, you were apprised of the fact, I believe, that the depot was being constructed—that the line was being constructed here—why was the bill never filed earlier by the Commission?

A. Well, I am unable to answer that question. The matter was discussed by the Commission and the Attorney General as to what course would be pursued to stop that. In the meantime, though, the case in the federal court had been filed as I recall. That was the first case.

Q. That had been passed upon in May. But you can give no reason why the Commission waited until this large sum of money for the construction of the railroad's line and depot had been spent before it acted?

A. No, I cannot. I don't know what caused the Commission to wait.

Q. You understood, of course, in January—prior to August—six or seven months before, that the law was proposed to be violated, from your standpoint, by the railroad company, did you not?

A. Well, we supposed at the time we passed that order requiring you to build your depot back here, that that would settle it, and that you would go ahead and comply with it.

Q. But you had notice that that would not be the case?

A. We had notice by the injunction.

Q. That was in February or March, wasn't it?

A. Yes, sir.

Q. And then during that time, you allowed the railroad company to proceed to spend its money?

A. Well, the case was pending in the courts and subject to adjudication.

Q. I am speaking of the case instituted by the Commission in the name of Mississippi; that was not instituted until the 3d day of August?

A. No, the case was in the courts, however and pending.

Q. Now, why, Mr. Kincannon, was not the case of the State of Mississippi instituted by the Commission earlier?

A. Well, I don't recollect why it was not. I don't remember when the Commission passed an order directing the Attorney General to begin the case.

Q. You have been the most active member of the Commission in this controversy, have you not?

A. Yes, sir.

Q. Mr. Bradley was opposed to the order originally, was he not?

A. Yes, sir.

Mr. Fletcher, for the complainant, objected to this question generally.

A. The old Commission, composed of Major McKinnis, Mr. Mc. and myself, were unanimous in the opinion that the depot should remain at the old site.

Q. Well, Mr. Kincannon, you and the Commission were apprised of the fact that the line was being constructed upon the new route, and that the depot was being built?

A. Well, I don't know about the Commission being apprised of that fact at all. I got it—I don't remember when I

got it, but I was told that it was being constructed down that way.

Q. As a matter of fact, the grading of the new line had been practically completed when you made your order on the 12th of January, 1904, had it not?

A. No, sir, I don't think the grading of the entire line had been completed—some of the grading had been done.

Q. I mean the entire line in Pontotoc—the new line in Pontotoc?

A. I think it had been practically completed to the present depot site. I don't think it had below that. I am not sure of it. I was never out there at that time.

MR. JAMES W. BELL, a witness sworn on behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Mr. Bell, your name is James W. Bell, is it?

A. Yes, sir.

Q. Where do you live?

A. Pontotoc.

Q. How long have you lived here?

A. Fifty-two years.

Q. How old are you?

A. Fifty-two years.

Q. Now, Mr. Bell, were you living here at the time when the Gulf & Chicago Railroad Company, commonly called the narrow gauge, was constructed?

A. Yes, sir.

Q. Who was in the active management—in the control of it—by whom was that road constructed?

A. Faulkner.

Q. What Faulkner was that?

A. W. C. Faulkner, of Ripley. I believe W. C. Faulkner is his name.

Q. Do you know anything about any controversy or any town of Pontotoc, and the location of a depot?

A. Yes, sir, I made a contract—Mr. Faulkner and myself.

Q. Just go ahead and tell in your own way what happened with reference to that contract—how it came to be made, and what the terms of the contract were.

A. I was apppointed as a committee, together with Mr.

Brown to go to Ripley to see Mr. Faulkner to see about the extension of his road to this place, and he asked eight thousand dollars to build his road to this place and depot grounds, and I told him that that was out of the question, that we could not raise it. We finally agreed upon fifty-five hundred dollars and depot grounds, which was to be either on that side in the hollow or on this side.

Q. Use the terms east or west.

A. East or west.

Q. Go ahead.

A. At either place, I was to furnish, or we were to furnish ground for the depot.

Q. Well, what did you do?

A. After the agreement, he sent Mr. Harris, who now lives in Meridian, and one of the present owners of the road, here to select the ground. We went over the grounds that belonged to me, and he said that mine was a little too far up there north of where he wished to locate the depot, and asked me if I could not get grounds a little lower, and I told him that I could and for him to go with me. We went to one Peter McCormick's, who then lived at this place, and he agreed and gave a deed to all the ground that Mr. Harris and Mr. Faulkner asked—to whatever they said was sufficient, together with what I gave myself. I made them a deed to Lot 21, 60x120 for depot purposes, and so did Mr. McCormick, and there is a copy of the deed, and I can refer you to the book and page.

Q. How many of these deeds were made, Mr. Bell?

A. One from Mr. McCormick and myself, page 362, Book 42, of the records of Pontotoc county, in the Chancery Clerk's office.

Q. Will you furnish the Commissioner with a copy of those deeds and mark them Exhibit A and Exhibit B to your deposition? Will you?

A. I will.

Q. Now, Mr. Bell, was there any contract with reference to the location of the depot in writing—no written contract?

A. There was a contract.

Q. Where is that contract now?

A. I think it is destroyed or lost.

Q. Who had charge of that contract?

A. At the time it was lost?

Q. Yes, sir.

A. I think one Mr. O. C. Carr probably had it; either he or Mr. Brown, the treasurer.

Q. Have you made any search among your papers for it yourself, or are you sure where it went to?

A. I am quite sure it was turned over to them as Treasurer of the committee.

Q. Was there any money paid to this railroad company?

A. Mr. Carr or Mr. Brown, I forget which,—I believe Mr. Brown had it for the committee, and afterwards turned it over to the treasurer, and afterwards paid it to Mr. Carr.

Q. Mr. Bell, was there any money paid for the purpose of securing the location of the line at the depot?

A. There was $5500 paid; I know that was paid.

Q. To whom was that paid?

A. To W. C. Faulkner, or his agents—whoever he designated when the time came to pay it. If I remember right, it was all paid to Mr. Faulkner. I am not sure.

Q. I will ask you, if you know whether the question of constructing the road further than the town of Pontotoc was under consideration by the officials of the road?

A. He told me when we were talking over the matter, that all he wanted was sufficient money from us to get out, and he had his man to go over the ground—a surveyor by the name of Brown.

Q. To go over what ground?

A. South of the town to see whether he could get out or not.

Q. What conclusion did he come to, as you understand it?

A. That he could get out for that money.

Q. What did the $5500 represent, Mr. Bell?

A. It was paid him to come in here, locate the depot, and getting out, as he said.

Q. Why was the amount fixed at $5500, if you know?

A. He first asked us for $8000, and as I told you, I stated to him that that was the limit that we could raise, and he consented to it.

Q. Now, what was the difference, if you know, between —as those gentlemen estimated it—between the cost of con-

structing the line where it was constructed and thence southward, and the cost of constructing it along another line, or any shorter line?

A. Estimated by Mr. Faulkner?

Q. Yes, sir.

A. Why I only know—I don't know his estimate, but I only know that he stated to me that he thought that he could get out for that amount of money.

Q. You say "get out;" what do you mean by that?

A. That is build south, as he said he would extend his road, intended to do so at some future day.

Q. Now, Mr. Bell, do you know what the length of the line of the narrow gauge railroad from the point where the roads diverge down to the old depot site is.

A. From the end of this track?

Q. Yes, up to the point where they come together.

A. We measured it, and if I remember right, it was fifty-nine hundred—I won't say—forty-seven or fifty-nine.

Q. Mr. Bell, are there any trains operated upon what was the narrow gauge line now.

A. You mean—yes, there are trains operated upon what was the narrow gauge line now.

Q. Now, over that space of 5900 feet or 4700 feet, are there any trains operated?

A. No, sir.

Q. It is alleged here in the answer to this bill that they have not abandoned any part of the narrow gauge line. State what you know about that.

A. That much of the road was abandoned—at least they don't run over it. That is what I would call it. I don't know how they would call it other than being abandoned.

Q. How long has it been since there has been a train over that part of the line?

A. Well, just the exact time I couldn't tell you, but something over a year, it strikes me.

Q. What amount of freight and passengers for the past year have been delivered over this part of the narrow gauge line that has not been broadened?

A. For that length of time?

Q. Yes, sir.

A. None of it has been brought to this old depot or no passengers.

Q. Now, is there any part of the narrow gauge line that has not been broadened and standardized?

A. Yes, sir.

Q. How much?

A. Well, I could not say—some forty-seven hundred or fifty-nine hundred, I don't remember; I could not tell you the exact figures, but something like that—hundred feet.

Q. Mr. Bell, do you own any property in the town of Pontotoc?

A. I do.

Q. How much?

A. I own four houses right over there to the southeast, and there are two of them in my name, and two in my wife's name. I don't know whether you would term them mine or my wife's. I control them. Two of those houses over there that belong to me individually, and I own the house that I live in over here—right across there.

Q. Is that the only property, real estate, owned by any member of your family in the town of Pontotoc?

A. Well, yes, I have some persons here who own some property.

Q. But I mean your immediate family?

A. Yes, my own immediate family—that is all we own

Q. Mr. Bell, that property that you own, outside of your residence, is what kind of property?

A. Four store houses, and the rest residences.

Q. What did you erect them for—for what purpose?

A. They are for rent. The dwelling house is occupied by myself.

Q. Now, Mr. Bell, what in your judgment will be the effect upon your property in the town of Pontotoc of permanently establishing the depot where it is—where it has been operated?

A. And changing the location of the line? You mean to change this depot back to remain over yonder?

Q. Yes, to change the line—to let it be located where it is.

A. I should think the value of my property would be decreased fifty per cent.

Q. Why do you say that?

A. Well, I know people who have made up a company to build storehouses over there, and I know from the effect that the railroad has had on other towns, that if the town people are over there that it would decrease this place—and if some start over there the others would have to follow.

Q. Now, Mr. Bell, how far is it from the town of Pontotoc to the new depot, approximately?

A. About a mile.

Q. What is the character of the country between the two points?

A. It is very rough.

Q. Just state what the character of the ground is—what difficulites in the way of transportation backwards and forwards,

A. Very hilly and very muddy. They have graded roads. you understand, but before that it was very hilly, and last year they abandoned the hack and carried passengers over there in regular road wagon.

Q. Just state what the condition of the road was during a portion of last winter, if you know.

A. It was very hard last winter, so much so that they had to abandon the bus line from here to the depot.

Q. Do you know whether or not the establishment of the depot over there has been any expense or burden to the traveling public?

A. I think so. It has been a right smart to me. I don't travel a great deal, but I have paid out a good deal of bus fare myself. If you will let me, I will present a little bus bill here that they have presented me. Here is five and three—eight dollars, for this year that I have paid for bus fare.

Q. You are not a merchant—you are postmaster?

A. Postmaster at this place.

Q. Do you know of your own knowledge whether the location of the depot has had any effect upon the increase in the cost of drayage—getting goods here—of your own knowledge?

A. Well, I have occasionally hauled things over to the depot, and I had to pay double as much as I did down at this place.

Q. Now, Mr. Bell, at the time when this new depot was located, where it is, what business enterprises were there?

A. Over yonder?

Q. Yes, sir.

A. None.

Q. How many stores or business houses are there in the older part of the town of Pontotoc?

A. Here?

Q. Yes, sir.

A. My recollection is there is something like fifty-two store houses over here in this part of town.

Q. Do you know what is the taxable property of the town of Pontotoc?

A. I think not.

MR. FONTAINE: Maybe sixty.

A. It may be. I don't mean to say that it is the exact amount—something like that.

Q. Do you know what the taxable property of the town of Pontotoc is?

A. I do not know the exact amount.

Q. Mr. Bell, what proportion of the property of the town of Pontotoc, considering it from the financial standpoint, is in the old town, compared with what is over there near the depot? What now—what per cent. would you say?

A. Well, there is at least three-fourths of it over this way in my opinion.

Q. Are there any natural divisions which would separate what you call the old town where the town is now established, from that part of the town where the depot is?

A. Well, there is a very muddy ravine that runs down north and south which would separate the two places.

Q. Now, Mr. Bell, do you know anything about the sentiment of the people of Pontotoc with reference to whether the depot should be here—down here where it is, or whether it should be over yonder, or whether this line should be the line of the railroad, or whether the other line should be the line of the railroad?

A. I don't think there was ever anything—I have been in one or two meetings—there has ever been anything put before the people whether they preferred it over there or here. The only thing that I everheard about—heard put to the meeting was, would you prefer the depot over there, or three or five miles from town.

Q. How many of those public meetings did you attend, Mr. Bell?

A. Well, I couldn't tell you the number.

Q. Were you at any meeting at any time when there was a vote taken on the question as to whether they should have the depot where it is now, or whether they should prefer to have it down here at the end of the narrow gauge line, or near the end?

A. I never was in any such meeting. I have been told that there was a meeting here of some kind, but if such a meeting was held I never knew anything about it, or never was invited.

Q. Did you know one Colonel Merrill?

A. I have had the pleasure of meeting the gentlemen.

Q. What official position, if any, did he have, with reference to the Mobile, Jackson & Kansas City Railroad Company?

A. I think he said he was the president of that road at one time.

Q. Were you ever present when he had any conference with the people with reference to this depot matter?

A. I was.

Q. What did Colonel Merrill—what seemed to be Colonel Merrill's intention with reference to this depot?

A. The gentleman made a speech here, in which he asked the people to let him move the depot out there to where it now stands, stating that he could not move the depot without the consent of the people—that he was fully aware of that fact.

Q. Well, what did the people say about it?

A. He said that he would either—if they would not allow him to move it there, he would run five miles from the town. He insisted that he would go five miles from the town, but said that if they would allow him to put the depot here, that he would build—that he would help build—as he said, a road over there. I myself arose and asked the gentleman what he meant by "help," and he said "I will help." I said "What do you mean?" and he never said anything—only that he would help. I said, "Do you mean a wheelbarrow full, or do you mean that you will fix the road?" He refused to say anything.

Q. Now, Mr. Bell, was there anything said there by anybody to Colonel Merrill in that meeting to the effect that there

would be opposition to an effort made by him to change the line or the depot?

A. I myself told him that I would fight him as long as there was breath in me for the maintenance of the depot at its present site, at that time, meaning the old depot.

Q. At the time when the railroad company—

A. I said to him that I had got a contract with Mr. Faulkner about that depot down there, and that I would fight for its maintenance there.

Q. At the time when this railroad company proceded to move the depot and abandon this line, state whether or not they had notice of the intention of the citizens of the town of Pontotoc to resist?

A. They had notice that they would be fought upon the ground, both by the people and the railroad Commission.

Q. Were you present at any meeting between the Railroad Commission and the people with reference to this matter?

A. The Railroad Commission had a meeting here in this house at one time, and there was quite a crowd there.

Q. What was the sentiment of the people with reference—

A. And there was a motion made by one member, Mr. Bradley, to take the vote of the house, which was done, and there were five or ten to one—I don't remember, but seven or eight were left over on one side of the house, and the balance over on the other.

Q. Five or ten to one in favor of which proposition?

A. The old depot.

Q. Now, Mr. Bell, something is said about the railroad —the old depot being in the street. What do you know about that?

A. Well, the one that was burned by some one was in the street pretty well.

Q. Do you know anything about whether the railroad company owns any other property down there or about there?

A. They do.

Q. Where is that property?

A. Part of it south, and part north of the street. I would like to make a little statement there, if agreeable between you gentlemen, about that depot business.

Q. Go ahead and let us hear what it is.

MR. RICH: If it is testimony, of course.

A. About the building of it—about its being in the street.

Q. Go ahead then.

A. After we had given this ground to Mr. Harris, he said that he would like to build it partly in the street, and that the land deeded by me to the railroad company could be utilized as a street, and would do just as well as the one that was upon the street. And he went with me to ask permission of the town authorities to allow him to build his depot partly in the street and use the grounds given by me for a street, which they consented to. That is how came the depot in the street.

Q. Now, Mr. Bell, taking the location of the old depot, what direction is the settled business part of the town from the old depot?

A. From the old depot?

Q. Yes, sir.

A. A little north of east.

Q. Now, the location of the new depot is what direction from the old depot?

A. It is a little northwest of the old depot.

Q. How far is it from the old depot to the new depot along the traveled road, approximately?

A. Well, to the best of my kuowledge, it is a little bit over a half mile.

Q. Now, what per cent. or proportion of the business part of town lies east of the old depot site?

A. East of the old depot site? Do you mean the—

Q. Take a straight line running due north and south.

A. You mean the present town or established town at that time.

Q. Was it so at the time when the railroad company abandoned that depot?

A. At that time?

Q. Yes, sir.

A. Oh, yes, sir, there were at that time that they moved the depot over there—there were I think I would be safe in saying four-fifths of it on this side of the old railroad track.

Q. Well, where is the court house located?

A. It is on the east side of the old depot.

Q. What about the churches?

A. All on the east side.

Q. What about the schools?

A. All on the east side.

MR. FLETCHER: I will ask permission to ask him another question if I think of it.

MR. RICH: Very well, sir.

CROSS EXAMINATION BY MR. RICH.

Q. Mr. Bell, with whom did you make—you and your associates made that contract?

MR FLETCHER: Mr. Rich, will you let me ask that question now? It has been suggested to me, and will save my going back.

Q. Mr. Bell, at the old depot site, is there any enterprise either at that depot there?

A. At the old depot?

Q. Yes, sir.

A. Yes, sir, there was a round bale company down there and a gin and mill—a planing mill. At the time it was abandoned there was a stave factory down there.

Q. What has become of the enterprises?

A. They played out and have gone—nothing there.

Q. Ceased to be operated—all of them have failed?

A. Not operated now. The round bale company isn't operated. I don't know whether it is for the lack of money to operate it or not, the stave company has gone.

Q. What is the chief industry of the town of Pontotoc?

A. Well, there is no—

Q. I don't mean in the way of factories or manufactories, but from what source at this time does the town of Pontotoc derive its sustenance and support?

A. Why, it is from the farming interests of the country.

Q. What do they raise?

A. Cotton.

Q. Do you know how much they handled here last year?

A. Ten thousand bales.

Q. Where is the cotton handled?

Is there a cotton platform for the purpose of handling it.

A. Yes, sir.

Q. Is that true now?

A. Yes, sir.

Q. What way is there of getting that cotton from the old depot to the place where it is to be shipped?

A. By wagons.

Q. Do you know what the cost is ordinarily per bale of draying that cotton from the old depot to the present site?

A. I have heard it said it is ten cents per bale. From my own knowledge, I don't know.

CROSS-EXAMINED BY MR. RICH.

Q. Mr. Bell, at the time the narrow gauge line was started into Pontotoc and the depot was erected here, what company owned the property?

A. What was the name of the company?

Q. Yes, sir.

A. It seems to me it was the Gulf and Chicago, if I remember right. It was either the Gulf & Chicago, or the Gulf & Ship Island—I can't tell you. I could not be positive.

Q. Did you or your associates ever have any contract with the Gulf and Chicago or the Gulf and Ship Island, or any other railroad company, as a corgorate entity, for the location of a depot?

A. We did.

Q. What company?

A. Well, as I stated to you before, I do not remember whether it was the Gulf & Chicago, but my recollection is that it was the Gulf & Chicago Railway Company. I may be thet Gulf & Ship Island—I won't be positive as to which it was.

Q. I understood you, in your direct examination, to say that your contract was made with Col. Faulkner?

A. Yes, sir as president of the railorad company.

Q. Now, that contract was made, as I understand you to say, for getting the railroad in to here to assist in getting it put here, and one of the conditions of the contract was that you were to provide depot grounds?

A. Yes, sir.

Q. That those depot grounds were to be selected by the engineer?

A. It was to be in either east or west of the town, in either hollow, at either place. I was to furnish the ground or see that it was done.

Q. They selected it down here at the old site?

A. Yes, sir.

Q. What is known as the old narrow gauge site?

A. The railroad authorities did, yes, sir.

Q. And that is all that was done between you, sir?

A. They selected it and I made the deeds.

Q. Nothing was ever said in one of those bonds or subscription notes about that contract, was there?

A. I don't remember as to what was in the face of the notes, but we had a contract to that effect, and it is in the deed.

Q. It is in the deeds?

A. Yes, sir. Will you please read this right here. That is a copy.

Q. I am asking for the record.

A. Please read that at the bottom, if you can. It reads for depot purposes and right of way.

Q. I understand. But what I mean is, is there any contract, either verbal or in writing, or any stipulation in any deed or subscription note, that the depot should be located at that particular place and maintained there?

A. There was in the contract, sir, that it was to be there?

Q. Well, now, with whom was that contract made?

A. It was made with W. C. Faulkner, the president of the railroad.

Q. Well, I mean who were the other parties to it?

A. It was made by a committee of the citizens of this town, representing the people.

Q. Well, can you tell who they were?

A. Who was that committee?

Q. Yes, sir.

A. Why, J. W. Bell—that is myself—R. P. Brown, went up there with me; and I think N. W. Stanford went with me, if I am not mistaken.

Q. You constituted a committee representing all the subscribers to that fund?

A. There was upon that committee, Mr. A. J. Brown was one; R. P. Brown was one; I think Mr. Fontaine over there was

on that committee that paid out the money; O. C. Carr and myself.

Q. I am talking about who the committee represented. You represented all the subscribers to the fund?

A. Yes, sir.

Q. Now, did all of the subscribers to this fund understand that they were subscribing to it under the terms of a contract, one of the conditions of which was that this depot should be permanently located and maintained there?

A. I should have to say, sir, they did.

Q. They did?

A. I should have to say they did.

Q. Do you know who prepared this contract, Mr. Bell?

A. Who wrote the contract?

Q. Yes, sir.

A. I rather think Mr. Carr, did, together with Mr. Faulkner —W. C. Faulkner; and maybe Mr. Faulkner wrote the contract and brought it here with him; I don't remember, sir.

Q. Well, was there embodied in this contract a provision that the road should come here, to go over a route named?

A. In the contract that it was to come down here in the hollow, yes, sir.

Q. Do you know what engineer selected that route?

A. A man by the name of Brown.

Q. Is he living now?

A. I could not tell you, sir.

Q. Don't you know where he is?

A. I do not.

Q. Now, Mr. Bell, you have testified with reference to your site. How much ground does the railroad company own at the old depot site now?

A. Well, I could not tell you the amount now.

Q. How long is it, and how wide is it?

A. I gave them a deed to sixty by one hundred and twenty feet. Mr. McCormick gave them a deed off of lot 39, west, ninety feet; south, sixty feet; east, three hundred feet; north, sixty feet, to the north line of said lot 40; thence west two hundred and ten feet to the commencing corner; also rights of way through lots 40, fifty feet on each side of track.

Q. This is in writing; but I am talking about the size of the grounds owned down there—you don't know that?

A. That is the size of the ground. Those are the dimensions. This is Mr. McCormick's, and I gave them one hundred and twenty by sixty.

Q. Do you know as to anything what would be necessary for the operation of a standard gauge railroad and equipped depot grounds in a place like that?

A. I only know that the gentlemen that represented the railroad accepted that as sufficient grounds for them, for their purposes.

Q. At that time—as the time I am talking about is now, do you know what ground was necessary for a railroad like that of the Mobile, Jackson & Kansas City Railroad Company, for side tracks, switch tracks, and storage tracks?

A. So far as it takes or requires, I don't know.

Q. What would it cost at the old site to get grounds twenty-two hundred feet long and two hundred and fifty feet wide?

A. Well, I could not make an estimate about that, sir.

Q. Would it cost as much as ten thousand dollars?

A. No.

Q. What private property would it take in, excluding the street now entirely?

A. Well, today, that would take in two or three little houses down there.

Q. Any industries or plants?

A. Well, if you crook around like you fellows talk about crooking—sometimes do—you could get that plant down there.

Q. I am talking about now extending that road south from the old site, from the terminus of the narrow gauge line, covering grounds twenty-two hundred feet long and two hundred and fifty feet wide, for the purpose of putting the depot and track outside of the street?

A. I don't think it would.

Q. Don't think it would cost ten thousand dollars?

A. I am sure it would not do that.

Q. About what would it cost?

A. I once sold the property. I can only tell you what I got for it.

Q. I am talking about now—not when you sold it. I am talking about buying it now for railroad purposes. There are two ways of getting it; I could buy it by giving what a man who

owned it asked for it and I could condemn it in the courts. Considering those two ways, now, what do you think I could get that much ground there for?

A. How long?

Q. Twenty-two hundred feet—that is about eight city blocks?

A. Well, I think such a thing could be bought for five thousand dollars. I am sure, I believe at least; I think mighty likely for less money.

Q. That is outside of the street?

A. Yes, I am not counting in the street.

Q. Now, I understand you to say that when these meetings were held that you held them simply for the purpose of discussing the present location of the depot?

A. How is that?

Q. That you held them for the purpose of discussing the location of the depot as at present located—I mean the new depot and one over there further west?

A. They were called by the railroad company—these meetings were—to know whether they could discuss the matter as to whether they could move or not.

Q. I understand. That is what I mean.

A. Yes, sir.

Q. You never considered the question of changing the location of the old narrow gauge site to the present new site, at any of those meetings?

A. The question involved, except the meeting with the railroad Commission, the Railroad Commission was here one day, and they took the sentiment of the crowd that was in the courthouse.

Q. Was that the time I was present?

A. I kinder believe you were here—I am not sure.

Q. Wasn't that after the order was made?

A. They made an order that day.

Q. That was in February, 1904, wasn't it?

A. I can't tell you the date. I believe it was sometime about that time.

Q. Well, the time I am talking about was in June preceding that, the prior year?

A. Yes, sir.

Q. When did you have all of those meetings?

A. Well, I think you were here when old Merrill was blowing around here, I am not sure.

Q. No, sir; I never was here with Merrill.

A. Well, I don't know.

Q. Well, what did you discuss with Merrill—what depot sites did you discuss with him?

A. Well, he come up here and said that he wanted to move the depot from its then location to another point in the town of Pontotoc, and if that was not done that he could not build a railroad here. He said if that was not done he would go out the other way. He just said he would not come in that damn hole.

Q. Was there any agreement by that crowd present that he could move the depot?

A. There was not.

Q. Was there any vote taken on the proposition?

A. There was not. They might have taken a vote. Why we did, I don't know. The house was full of country people, but they let everybody vote when they did vote.

Q. Have they not as much interest in this matter as anybody?

A. I suppose so.

Q. Don't these country people come to Pontotoc to trade with you?

A. They do.

Q. Is it really a matter of more concern to them than to you?

A. Yes, but the question is appealed to the people of the town.

Q. I understand.

A. If you appeal to the people of the town and you are talking to the people of the town you mean the people who live in the corporate limits.

Q. I understand, but I am getting at the actual conditions out there now. Did you at any meeting subsequent to that time take any vote on the proposition to change the depot?

A. I don't remember any except to change from this to that over yonder. The only question that was ever in any meeting was as to whether you should have it five miles east, or over yonder.

Q. Well, did you agree to have it over there?

A. I never did.

Q. Did anybody agree to have it over there?

A. I don't know that they did.

Q. Did they have any vote on the proposition?

A. They might have had a vote on it—I don't know.

Q. Weren't you present when the vote was taken?

A. I don't know that I was. They appointed some sort of committees here.

Q. Well, Mr Bell, you have been one of the active organizers of the litigation on the side of the people here all the time, haven't you?

A. I have been one of the fighters.

Q. That is what I mean. You are just putting it in another way. Why did you wait until that railroad had spent a large sum of money in breaking its grade and in breaking its depot grounds over the new route, before you commenced the litigation?

A. We didn't do that. We invited you and we invited your authorities to come here. I told you from the start to finish that we would fight you.

Q. Who did you notify?

A. Mr. Rich, weren't you here that day with Merrill and his crowd?

Q. No.

A. I know that Mr. Merrill did, because I notified—what is the president of your road named? Let me see, well, down here, any way, three or four them here, I told them at the depot we would fight them to the bitter end.

Q. Why didn't you commence the fight?

A. We did do it.

Q. Why did you allow them to spend a large sum of money before this controversy was instituted?

A. Well, we were prepared to fight them all of the time—getting ready. You were notified, your road was notified, before they ever throwed a shovel full of dirt, when we notified Mr. Stanton and his crowd.

Q. Mr. Merrill went out of office immediately after being up here, didn't he?

A. I don't remember just when he went out. I don't know the date.

Q. Now, as to the inconvenience of getting over there, and its effect upon property values. Why do you say that the permanent establishment of that depot there would decrease the value of your property fifty per cent.?

A. Well, if there was another town established over there, it would be so, taking it over there just as it has been done, the same way.

Q. Don't you think, Mr. Bell, that it would be to the interest of Pontotoc county and to the state of Mississippi, to have another town established there with increased values?

A. To have—

Q. Don't you think that if a town was to grow up down there near the site of the depot, with property as valuable as that of the old town of Pontotoc, it would be to the interest of the State of Mississippi?

A. It would be to the interest of the taxable values. If you were to put your depot here, you would be pulling down one side for the interest of another.

Q. Why do you think this side would be pulled down? Tell me what great inconvenience you would suffer?

A. Because we could not get over there, and could not get our stuff over there.

Q. How much further east from the present depot to the business part of town of Pontotoc is it than it was to the old depot?

A. Nearly three-quarters of a mile, and the drayage is about double.

Q. Wait, I will get to that.

Q. What makes drayage expensive?

A. Distance.

Q. Is it distance, or the character of the roads largely?

A. Distance has a great deal to do with it.

Q. Doesn't the character of the roads have more to do with it?

A. Something.

Q. Or have a reasonable limit? Now, who is responsible for the character of your public roads and streets?

A. Well, if they move the depot and throw us over the rough ground, I should say, sir, that the railroad was responsible for us to have to travel over such roads.

Q. Suppose you had a good road through—suppose the

people of the town of Pontotoc get a good road to the depot—I mean a first class road, wouldn't the conditions under which freight would be hauled to and from the depot be better than they were with the depot established there at the old site?

A. Taking the distance in, I don't think it would be better, sir.

Q. Well, it would be no worse?

A. The freight would be no more.

Q. What does it cost you to haul freight—a load of freight—from one of your concerns to the new depot?

A. I think it costs fifty cents.

Q. What does it cost to haul it to the old depot?

A. Twenty cents.

Q. Twenty cents?

A. I think so.

Q. Have you any accurate knowledge on that subject?

A. The drayman is here. You might call him in, and he will tell you.

Q. We will see him later.

A. He was here.

Q. What disastrous effect have you observed as the result of the change of the depot upon the town of Pontotoc or its business?

A. Well, it is inconvenient to get over there.

Q. That we have already discussed. I mean now upon property values.

A. Well, not much. Still they would on account of the unsettled state of affairs.

Q. Have any of your stores been closed up?

A. No, sir.

Q. Have any new ones been opened?

A. No, sir; not that I know of. I don't think there have been any since.

Q. Has Pontotoc grown much in the past ten years?

A. No, so far as the stores are concerned, since that controversy has arisen.

Q. But has it grown in the last ten years?

A. Yes, sir.

Q. Isn't Pontotoc now about what it was ten years ago?

A. No, it is better built up in the last ten years.

Q. Isn't the rental value of property higher here today than it was two years ago?

A. No, sir.

Q. Isn't it higher than it was five years ago?

A. My part of it isn't.

Q. I am talking about generally. Your property may be specially located. I am speaking of the rentals generally.

A. Well, there isn't much difference between what it is now and what it was then.

Q. You are getting about as much?

A. I am getting identically the same as I did then.

Q. There had been no change. Isn't the rental value the best method of determining the market value of the property?

A. I don't know. I have been told by my men who rent the stores that if the depot was established over there, that they would go over there and that they would not pay as much for it.

Q. Would move over there?

A. This is not by all of them, however, but by some of them.

Q. Have many dwelling houses been built, say, in the last three years?

A. Erections, yes, sir.

Q. Has it been about the usual growth of Pontotoc? Has anything unusual occurred here in the last two years?

A. There have been some dwelling houses built here.

Q. Since this depot controversy came about?

A. There have been several built here that I know of since the decision of the Supreme Court in this matter.

Q. None were built before, pending the controversy?

A. Well, there might have been a few. As long as you have gone that far with me, Mr. Rich, I would like to state that I don't think that there is a single man who has built a dwelling house on this side that would have done so had he believed that the railroad could have maintained the depot over yonder.

Q. In your conduct of this controversy, you have considered exclusively and entirely, the effect upon your interests, Mr. Bell?

A. The general public, sir.

Q. You have not considered the effect upon the railroad at all?

A. I didn't think they needed any consideration—that

they were already down here and that they didn't need any figuring on that part, that that was the place they belonged.

Q. Was that contract between you and your associates and the Gulf & Ship Island or the Gulf & Chicago, and Colonel Faulkner, ever recorded anywhere?

A. I don't think, sir, that it was. We held that contract until we had paid the money and the depot was built and the railroad was down here, thinking that everything had been carried out, and that the whole thing was in good faith, as there was no reason why it should not be.

Q. How was this $5,500 to be paid? Was it to be paid in money or supplies?

A. It was to be paid monthly, and they would buy supplies from anybody they wanted to. I could answer from my individual subscription that it was paid in money.

MR. FLETCHER: Just state how much that was, to save my asking the question.

A. I paid $250.00. My father gave $250.00, part of which I paid myself.

MR. RICH: Now, you have been questioned—

A. You asked me of my immediate family. My father-in-law gave $250.00.

Q. Do you remember the date of your subscription?

A. I could not tell you, sir.

Q. It was made though, before any survey was made?

A. The subscription?

Q. Yes, sir.

A. Well, we got up the subscription—the contract was not written up until the survey was made. The survey was made and the contract was written up after it was decided as to which side of the town it was to go on.

Q. Mr. Bell, you have mentioned some wholesale establishments that proposed to move over or take in contemplation the erection of plants at the new depot site?

A. Yes, sir, there was a wholesale concern under instruction to go over there had the Supreme Court decided on it. I have been told that such a move was contemplated, and I have every reason to believe that such were the facts.

Q. And your purpose is to prevent that?

A. No, sir; my purpose is to force you back down here in the hollow.

Q. I understand. But you also want to keep anybody from building plants on the new sites?

A. No, sir; I want you to go where you made your contract, and if the wholesale man wants to build his wholesale house over there, he can build it; but my whole purpose is to put back the depot on the grounds that their railroad company made a contract for.

Q. Well, if you didn't believe that other plants might be erected, over there, that might complete with yourself in the old town, you would not be worried about it, would you?

A. Yes, sir; I don't want it over there. If I knew that there would not be a single house put up over there, I would fight you just as hard down here as I would now. I will further state to you that had I known that the depot would not have been kept down here at the old place, that I would never have built those four stores over there.

REBUTTAL EXAMINATION BY MR. FLETCHER.

Q. Mr. Bell, you were asked as to whether or not it would be better for the State of Mississippi to build up a town over yonder. Suppose the effect of location of the depot the way this railroad company want to put it, was to enhance the value of that property a hundred thousand dollars, and to decrease the value of the property over here by a hundred thousand dollars, what advantage would that be to the State?

A. None. I stated that awhile ago, I think, that he would be pulling down over here as well as building up over there, and I did not think he could build a bigger place than this.

Q. A question was asked you by Mr. Rich, why you waited for the institution of this litigation. Are you a party to this suit?

A. As I understand, this is the State of Mississippi against this railroad company. Still, I took a great interest in it, and might be considered a party to the suit, I reckon.

Q. Are you the person who told the attorneys and the Railroad Commission at what particular time to institute the suit and the proceedings. Was that under your contract, Mr. Bell?

A. Of course I had nothing to do with the Railroad Commission. I was urging them on all of the time to take action in the case.

SURREBUTTAL EXAMINATION BY MR. RICH.

Q. Mr. Bell, you have contributed to the employment of counsel, haven't you, in this case?

A. Yes, sir.

Q. How many people of the town of Pontotoc have contributed to that end, do you know?

A. I could not tell you, sir.

Q. As many as ten?

A. Well, I could not tell you how many have. I don't know.

Q. Well, just your best idea or knowledge.

A. I would say more.

Q. They are the only people who have taken any active interest in this matter?

A. There were quite a number, sir, that offered and never paid a cent, but they were exceedingly anxious that the depot be held down here. In other words, there are quite a number or people that have an idea that you can't beat a railroad company—that they have got money, and they are actually afraid. Anywheres that you go, you can find a fellow who is afraid to talk to what you call a "big" fellow, anyhow. But that is the only thing. If they had that out of them, they would all be for it down here. There are nine-tenths of the people right here in town today who are in favor of this railroad being down here.

MR. J. E. WALKER, a witness sworn on behalf of the Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Your name is J. E. Walker?

A. Yes, sir.

Q. Where do you live, Mr. Walker?

A. In Pontotoc.

Q. How long have you lived here?

A. Ever since 1880-1879.

Q. Were you here when the Gulf & Chicago Railroad Company was constructed?

A. Yes, sir.

Q. The narrow gauge railroad?

A. Yes, sir.

Q. Mr. Walker, is that narrow gauge railroad now in operation through its entire length?

A. No, sir.

Q. How much of it is not.?

A. Well, it is standardized all except about a mile and a quarter.

Q. Where does that mile and a quarter lie?

A. At this new southern terminus.

Q. It is from the terminus northward where it meets the new line?

A. Yes, sir.

Q. How long has it been since any train was operated on that part?

A. A year the first of last August—about that.

Q. What business were you engaged in?

A. The mercantile business at that time.

Q. What business have you now?

A. Sorter building houses and dealing in real estate.

Q. Do you own any real estate here?

A. Yes, sir.

Q. How many houses do you own, Mr. Walker?

A. I own and control something about twenty-five.

Q. Are they residences or business houses?

A. Six of them are business houses, the other residences.

Q. Now, Mr. Walker, as a business man and dealer in real estate, what in your judgment would be the effect on property values of the permanent establishment and location of the line as it is now and the depot where it is now?

A. I think it would depreciate about fifty per cent. on the dollar with it over yonder.

Q. Do you know, Mr. Walker, what is the sentiment of the people of the town of Pontotoc with reference to the change in lines and depots?

A. Well, most all of them prefer it down here at the old site.

Q. Were you present at any railroad meetings which were referred to in the pleadings and proof?

A. Yes, sir; I was present at one or two—two or three.

Q. By whom were those meetings called?

A. By Mr. Merrill, I think.

Q. Were you present at any time when a vote was taken as to the preference of the people with reference to the depot sites?

A. No, sir; I was not.

Q. At those meetings that you attended, Mr. Walker, what was the expressed sentiment of the people with reference to the depot location?

A. All wanted it down here—practically all.

Q. Was anything said to Mr. Merrill in this meeting, publicly, with reference to the desire of the people and their intention to hold the depot down here? If so, state what it was.

A. Yes, sir; they all let him know that they wanted it down here—nearly all of them—and some did tell him right out.

Q. Now, do you know anything of any industries or business houses located at the old depot site before it was abandoned as a depot site?

A. Yes, sir; there was a gin run down there—round bale, I think, and a square bale gin, I think, and a planer and a stave factory.

Q. Anything else in the way of houses for the storage of material or products or cotton seed?

A. Yes, sir, there was a cotton platform which they weighed cotton on.

Q. Where is that now?

A. That is there now.

Q. Any seed houses?

A. Yes, several. I had one of them myself.

Q. What become of those industries?

A. I tore my seed house down after they moved the depot, and the stave factory, they moved away—too much trouble to get material in here and haul it back over yonder, so they told me, and the gin is still there, but it is not operated now.

Q. Now, do you know anything about how much cotton is marketed here per year, annually?

A. Something from ten to twelve thousand bales.

Q. Such a thing as a public cotton weigher?

A. Yes, sir.

Q. Where is that weighed?

A. At the old depot site.

Q. Do you know the cost of draying that from the old to the new depot site?

A. Ten to twenty cents a bale.

Q. Why has it increased at sometimes over others?

A. The roads were too bad.

Q. At times it runs as high as twenty-five cents a bale?

A. Yes, sir; sometimes as high as thirty.

Q. You were living here last winter when the roads were bad from here to the new depot?

A. Yes, sir.

Q. What was the condition of those roads?

A. They got so bad you could not travel, I think, at times.

Q. Do you know anything about whether the public are inconvenienced by reason of the cost of transportation?

A. They have, very much.

Q. How, in what ways?

A. Sometimes it was expensive, and sometimes you could not get there without walking through the mud.

Q. How about the freights?

A. They were about doubled. All passengers had to pay about twenty-five cents to get there and twenty-five to fifty cents, the round trip.

Q. know, Mr. Walker, about whether the merchants were able to get their freights at all times, or not.

A. No, sir; at times they could not get it on account of the roads.

Q. How far is it from the center of the town, from the courthouse, to that new depot?

A. Well, it is right about a mile.

Q. What is the character of the country between?

A. Well, it was hilly and a big hollow, you see, before the levy, a rough road.

Q. By whom was that levy made?

A. By the town.

Q. Do you know what it cost?

A. No, sir; I don't know. It cost a great deal, though.

Q. Now, what did you say became of those cotton-seed houses at the depot?

A. I tore them down and moved out—I had no use for them there.

Q. Mr. Walker, what will be the effect of leaving the depot over yonder, as to the price of goods in this town, or the cost of goods to the merchants of this town?

A. Well, it would cost them twice as much to dray them over there as it would here—down at this place—make them higher and inconvenient to get through the winter season.

Q. Now, you spoke about some levying being done down there by the town. Is that road now—that is, after it has been levied—is it in what would be called a good, passable condition, suitable for all seasons of the year?

A. No, sir; it is not.

Q. How many roads would it be necessary to make and to have to get over there from the old town to the depot, to accommodate the needs of the town?

A. It would take about two to put in a comparatively good fix to accommodate the people.

Q. What would be, in your opinion, the probable cost of putting two roads in good condition of repair, so that the town would not be inconvenienced by the railroad being over yonder?

A. Well, it would take several thousand dollars.

Q. Could you give an idea of about how much it would be

A. Well, I think they have already done cost us about three or four thousand dollars, and they are not half through with it y e

Q. What figure would you name as being the least reasonable to put the two roads in repair?

A. To keep them there too?

Q. Yes, sir.

A. I think five thousand, or more.

Q. Do you know what the taxable property of the town of Pontotoc is, Mr. Walker?

A. No, sir, I do not.

Q. What would you value your real estate holdings at, Mr. Walker? You spoke of twenty houses or more that you owned?

A. Well, about forty thousand dollars.

Q. You say you feel it would depreciate in value fifty per cent.?

A. Yes, sir.

CROSS-EXAMINATION BY MR. RICH.

Q. Mr. Walker, you say you have lived here since 1879?

A. Yes, sir.

Q. Did you own any property here in 1879?

A. No, sir.

Q. Did you own any in 1880 or 1881?

A. I don't think I did.

Q. Did you own any prior to the building of this narrow gauge railroad here?

A. I don't think I did. If I did, it was a homestead.

Q. You bought the property then that you own since the narrow gauge probably was constructed?

A. Yes, sir.

Q. When did you commence buying property?

A. Well, 1888 or 1890. Somewhere along there.

Q. Twelve or fifteen years ago?

A. Yes, sir.

Q. Well, has your property improved in value, or not?

A. Yes, sir; I think so.

Q. Has it decreased in value in the last eighteen months?

A. Well, at one time, I think it did.

Q. Well, what do you think now?

A. Well, since that injunction was decided against you, I think it has gone up.

Q. It has gone up?

A. Yes, I think some of it, at least, I am not selling any of it.

Q. While the injunction was pending, were your rentals decreased any?

A. No, they were not decreased.

Q. You charged a man just as much for the use of your property while the injunction was pending as you did since the Supreme Court discharged it?

A. No, sir, I charge more now.

Q. Have you increased your rentals?

A. Yes, sir.

Q. You say your property is valued at about $40,000?

A. Some where about that.

Q. What do you assess it for?

A. I don't know. Just as little as I can.

Q. Is it not worth nearly as much for assessment as it is for a railroad law suit?

A. No, sir.

Q. Now, about the improvement of this highway. You say already three or four thousand dollars have been spent on the two roads?

A. That is my understanding.

Q. That has been spent by the city of Pontotoc, has it?

A. Yes, sir.

Q. Do you think it would take as much as twenty thousand dollars to put those roads in condition?

A. To have anything done to them?

Q. Yes, sir.

A. Yes, sir.

Q. Fully that?

A. Yes, sir.

Q. Don't you think that if those two highways were put in first-class condition, that you would be in better condition for handling your freight to and from the new depot, than you would handling it to and from the old depot under the old conditions?

A. No, sir.

Q. Why?

A. Because it would cost you twice as much to haul it from over yonder than it would here?

Q. How much would it cost you, under old conditions, to get a wagon load of flour from the old depot?

A. Fifteen to twenty-five cents.

Q. From the old depot?

A. Yes, sir.

Q. Suppose you could get it for four cents a barrel, now wouldn't you think conditions had improved very much?

A. From over yonder?

Q. Yes, sir.

A. No, sir; I would not. That would be about doubling it.

Q. You don't mean that you could get the dray load for fifteen cents from the old depot?

A. From fifteen to twenty-five cents.

Q. Ten barrels?

A. Yes, sir; they charge you twice as much from over

yonder. We didn't have to pay any bus hire down there from the old depot. You have to pay it from over yonder.

Q. Now, about those industries that have moved away from down there—the round-bale gin?

A. Yes, sir.

Q. The round-bale gin has practically gone out of business everywhere?

A. It has here.

Q. Hasn't it everywhere else?

A. I couldn't tell you.

Q. Isn't that about a dead industry all over the country?

A. I have heard something to that effect.

Q. The institution has been in the hands of a receiver, and is now, isn't it?

A. I don't know, sir.

Q. Now, Mr. Walker, as a matter of fact your interest in this lawsuit—your activity about it—is due entirely to the fear that values may be increased adjacent to the new depot site, and decreased to some extent here in the old town, isn't it?

A. Well, it might increase that over there.

Q. For awhile, it would, I think, if they built a town there and one here—won't either one of them much. You think this territory isn't big enough. Why do you think that?

A. The territory isn't big enough to support two towns right here, —my idea about it.

Q. Don't two towns tend to increase properties?

A. Yes, but not in a country place like this.

Q. Have you no hope about this town being bigger?

A. It may be if we can get the depot built here.

Q. How many houses have you built in the last two years?

A. Two, and are on the third one now, I think.

Q. How long have you been building them?

A. I have beenbuilding houses for seven or eight years—ten.

Q. Been building them right straight along, haven't you?

A. Yes, sir.

Q. You didn't stop when this depot—

A. Yes, sir; I would have had half a dozen more if the thing had been settled.

Q. Did you build any in 1904, the last year?

A. Yes, sir.

Q. How many?

A. Two or three.

Q. Residences or places of business?

A. Residences.

Q. Rentals for all?

A. Sometimes they are rented and sometimes they are not. There are three or four vacant now.

Q. Do you know when this litigation commenced?

A. Well, it has been on foot for quite awhile—about two years, I reckon.

Q. Well, you built three houses in 1904 while the litigation was pending, and before you had any intimation from any court that it was to be finally adjudicated favorably to the old depot?

A. Well, I always thought it would be settled that way.

Q. So, then, it hasn't had any effect on your conduct at all?

A. Yes, sir; I would have built more if it had been fully settled, and would be building now more houses if it had been settled.

Q. Who owns the cotton platform at the old depot site?

A. Well, I think it belongs to two or three cotton buyers here—three or four men.

Q. They have bought it recently, havne't they?

A. Yes, sir; in the last year or two.

Q. How many bales of cotton did Pontotoc get before they had a railroad?

A. I don't know, sir.

Q. Did you get a bale for market?

A. Yes, sir; I bought cotton when I first came here.

Q. Where did you send it?

A. To Tupelo.

Q. Send it over by wagon?

A. Yes, sir.

Q. How much have your cotton receipts fallen off since the controversy started?

A. Not any that I know of.

Q. Does it make any difference to a merchant of Pontotoc where the cotton platform is?

A. Yes, sir.

Q. Why?

A. Because they have to pay a considerable amount to have it hauled from this place to over yonder.

Q. Suppose they move it over yonder?

A. They would have to move their platform over there.

Q. Couldn't they be delivered there at the platform?

A. O, it could be, but it would be an extra expense.

Q. This platform is a private enterprise, isn't it?

A. Well, it belongs to people here in town—the cotton buyers—is my understanding.

Q. You say it is owned by two or three of them?

A. I don't know. There are half a dozen. They made a stock company and bought it.

Q. Is it not a public platform?

A. The public use it.

Q. The public pay for using it?

A. I don't know. They pay ten cents for cotton weighing, and twenty cents for using it.

Q. You don't know anything about the rates?

A. I know it is weighed there. I know what it cost.

Q. You know nothing of whether the cotton platform is run by all the parties who use it?

A. I think it is owned by three or four, and is used by everybody.

Q. You say the price of handling cotton or hauling cotton amounts to fifteen or thirty cents a bale?

A. Yes, sir. I think there are a few instances where they paid as much as thirty cents, but a good deal of it was hauled at twenty-five.

Q. Is that due to the condition of the roads?

A. Yes, or increase in hauling.

Q. Do you expect to visit the condition of the public roads of Pontotoc county upon the M. J. & K. C. Railroad Company?

Mr. Fletcher objected to the above question.

Q. What is your answer?

A. What is the question?

Q. I asked if you visited the condition of the public roads upon the M. J. & K. C. Railroad Company?

A. If they had a depot down here, they would not be so bad. They have to haul all their cotton there and it would cut them all to pieces.

Q. Weren't the roads unusually bad everywhere last winter?

A. Pretty bad, but they were worse here than anywhere else, where they had to haul this cotton.

Q. Wasn't that due to the fact that they had commenced work on that road before the bad weather set in, and then abandoned it?

A. I could not tell you.

Q. You were there and saw it?

A. I saw they were bad.

Q. You say the work on it was abandoned?

A. They thought it was completed when they abandoned it.

Q. The work was done by the town of Pontotoc?

A. Yes, sir.

Q. Suppose the work had been well done by the town of Pontotoc, you would not have had so much drayage?

A. It might have been done better, but the town of Pontotoc was not able to put them in better repair. They didn't have the money.

Q. Did you ever hear that the Railroad Company had offered to put the road in condition for you with its own resources?

A. No, sir; I did not. They said they would help to. I heard that.

Q. Now, nobody ever told you that they had offered to do it?

A. Mr. Fontaine asked me if they would compromise this suit, if they would do it. He didn't say they would do it. He asked me several times to compromise it—to see if I couldn't help him to compromise it, and in that way.

Q. To compromise it by building you—

A. No, sir; by making a good road from here over to the depot, and asked if the town would do that. He didn't say they would do it.

Q. Well, suppose the railroad would do it?

A. Well, what about it?

Q. Would that be agreeable to you?

A. No, sir; it would not.

Q. Well, now, what would be agreeable to you other than changing this line at a cost of nearly a hundred thousand dollars to the railroad company?

A. I don't see where they would spend any one hundred

thousand dollars.

Q. I am not asking you about that—just asking you, just assuming that, would anything else suit you except the change of this location entirely?

A. I want the depot down here.

Q. And nowhere else?

A. No, sir.

Q. And if a majority of your neighbors wanted it on the other side of town, that would not do?

A. There isn't any use talking about these offers, because they are not going to be.

Q. We may be able to show you that before we get through.

A. You will have to show that before I will believe it.

Q. You say you were not present at any meeting when any vote was taken on this proposition?

A. No, sir.

Q. You say, now, Mr. Walker, that you think the permanent establishment of the depot over there would decrease the market value of the property of the town of Pontotoc fifty per cent?

A. Yes, sir; something like that—my idea about it.

Q. Didn't you say in your affidavit that was submitted to the Chancellor in this case, that it would decrease the value twenty-five per cent.?

A. I may have said so.

Q. Well, now, there is a vast deal of difference between twenty-five and fifty per cent. How do you arrive at it?

A. At that time, I didn't know whether they would build up a town over there, but since then I have found that their disposition is to build a town over there, and some of the railroad people who are connected with it say that they are going to build one there, so that makes a whole lot of difference.

Q. Where have you moved your seed houses to?

A. Why, I have moved them up home.

Q. You were not using them as seed houses any longer?

A. No, sir.

Q. You have abandoned that?

A. Yes, sir.

Q. Did you build the seed houses?

A. I built one of them.

Q. Who built the others?

A. I don't know who built the others. I come in possession of it after it was built.

Q. The company that you represent in the purchase of seed built the house, didn't they?

A. They paid for the building, one of them.

Q. You paid for the others?

A. No, sir. I come in possession of it after it was built.

Q. You never paid for it?

A. No, sir; I paid for them, but they paid me back. After they moved the depot they gave me the money.

Q. They paid you for building the houses, then?

A. Yes, sir; but after the depot was moved, they give me the houses. They didn't have any use for them.

REBUTTAL EXAMINATION BY MR. FLETCHER.

Q. You were asked about the assessment value of your property and what you gave it in for taxes. Do you know the value of this railroad over here?

A. No, sir.

Q. Do you know how much they give it in to the Railroad Commission for assessment?

A. About half what they would take for it, I guess.

Q. Mr. Rich asked you about this company buying the cotton platform a year or two ago. How long has the cotton platform been down at that place?

A. Well, for several years; they weighed the cotton down there ever since the road was completed here. The platform had belonged to the railroad and the town.

Q. Speaking about the condition of this road that had been levied. Now, Mr. Rich asked you about the condition of this road that had been graded and filled down here by the town. Is there any other road leading from the cotton tplaform to the depot?

A. There are two that have been graded, yes, sir; one over here, and one down here—one from the cotton platform over this way.

Q. With reference to the offer of the railroad company to construct the road and put it in repair, have you ever seen any-

thing from the railroad company of a definite nature—in the form of a written offer—to do that?

A. No, sir.

MR. A. J. CLARK, a witness sworn on behalf of the compalinant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Mr. Clark, your name is A. J. Clark?

A. Yes, sir.

Q. How long have you lived in the town of Pontotoc?

A. About thirty or thirty-one years.

Q. What business are you engaged in, Mr. Clark?

A. Mercantile business.

Q. You own any property in the town of Pontotoc?

A. Yes, sir.

Q. What property?

A. I own a half interest in a two-story brick store on the northeast corner of the square, own my house where I am living, and two lots adjoining—all in the corporation.

Q. Just approximate it, Mr. Clark. What would be the value of your real estate and holdings in the town?

A. Mr. Fletcher, I am getting along in years, and I have no idea—I never thought that I would ever sell at all, or change, and I could not put any particular value on them. I do not expect to change as long as I live.

Q. Mr. Clark, in your judgment, what would be the effect on the property values of the town if the depot is permanently located where the railroad wants to put it over there at the new place?

A. I think it would be a very serious, as well as lasting damage to the property and business interests of the town.

Q. Why do you think so, Mr. Clark?

A. Because, I think the buildings would go up over there, and business houses would go up over there, and business would be attracted there, cotton buyers would go there, and everything would weigh against this town.

Q. Do you know anytihng about whether there has been any change in the cost of drayage since the depot has been moved?

A. Mr. Cruse has been draying for me for a number of

years, and my dry goods hauled from this depot here cost me twenty-five cents, and he hauled my coal for me in the winter and charged me for that forty cents. Now he charges me forty cents a load for my dry goods and fifty cents for my coal. That is the difference now that I have to pay.

Q. Mr. Clark, did you contribute anything towards the establishment of the road down here where the narrow gauge runs at the time it was put there?

A. Yes, sir. I was in business at the time with Mr. Brown, where I am now, and we paid five hundred dollars to help bring this road down here.

Q. What was your understanding as to what that money was to be paid for, Mr. Clark?

A. To bring this narrow gauge road here, and to locate a depot down at one of the other of these hollows convenient to the town. That was my understanding about it, and for that reason I was willing to contribute to it.

Q. Did you attend any of these public meetings that were held here for conference between the railroad company and the citizens?

A. Yes, sir, to one that Mr. Merrill had, I come.

Q. Do you know what Mr. Merrill's object in calling that meeting was, as stated by him?

A. I don't know. I always thought Mr. Merrill's object was to pull us for a certain sum of money for the depot. I do not know—I could not swear to that.

Q. What did Mr. Merrill say, and what was the purpose of his talk here about the depot question?

A. I don't recall, now, Mr. Fletcher, but I think that he was opposed to the depot being down here, because I heard him make use of a certain expression which may not be in good taste, because he was complaining about it. He said very emphatically that he had to climb this cussed hill. At least, that is what everybody said. I have nothing against Mr. Merrill at all.

Q. If one were to come from the new depot over to town, would he have to climb any kind of hills?

A. He would have to come way round, when the money spent on that upper street might make it a little more level. I have not traveled it for a good long time. I don't know whether it is any account now or not.

Q. What is your judgment, Mr. Clark as to the sentiment of the business men of Pontotoc with reference to the location of the depot and railroad?

A. Let the depot remain on the old site, and let the train run along there. That is the opinion of the business men that I meet and associate with.

CROSS-EXAMINATION BY MR. RICH.

Q. Mr. Clark, you say you, together with others, contributed a sum of money to get the railroad—the narrow gauge railroad—into the town of Pontotoc, and to have a depot located at one of two places convenient to town.

A. At one of these hollows convenient to town.

Q. Was there anything in the contract between you and anybody else that a depot should be located at any particular place down there?

A. Not between me personally; but I understood that two parties went over here and made the contract with Colonel Faulkner, and I abided by it.

Q. That was after you had subscribed your money?

A. Yes, sir.

Q. But wasn't that money contributed for the purpose of getting the railroad here?

A. Yes, sir, and getting the depot down at one of those hollows, convenient to town. That was my positive understanding about it at the time.

Q. In one of two places?-

A. At one of these two hollows. Mr. Rich, to get the thing straight that was satisfactory to the town.

Q. Now, Mr. Clark, as a matter of fact, the chief reason for the opposition was the understanding of yourself and your associates in the transaction that you were to have stock in the Gulf and Ship Island Railroad Company?

A. I don't know whether it was or not. I know I never had any.

Q. Did others?

A. I don't know, Mr. Rich. I never had anything to do with him about mine. I don't know whether they got any stock. I know I never got any.

Q. Now, Mr. Clark, the fear that you have, as a matter

of fact, as to the bad effect upon the town of the location of this new depot, is due entirely to the fact that you are afraid other competing enterprises in the town will be located over in that town?

A. So far as the industries are concerned, I don't mind about that. But I think the town will be built up with new stores, and detract greatly from this town—greater than it did to put the railroad here.

Q. Then, as a matter of fact, it would only have a bad effect upon competing merchants who are now located in this old town?

A. Yes, and the traveling men and all.

Q. If the town were built up at that place—if the depot was built up at that place, it would then be a town of larger size?

A. Well, that, Mr. Rich, would not affect my notion that we are now down here and must have it down here.

Q. But I am getting at your real reason for wanting it here and not wanting it at the other place. Is it due to the fact that you fear that it would affect property values at the old town?

A. It would affect business interests and make it bad for the traveling public.

Q. But I am assuming that a new town grow up adjacent to the new depot site?

A. If a new town grew up at the site over there, and we had our depot here, it would probably be to the advantage of both of us, but if the depot is kept over there, it would be, as I say, a lasting and serious damage to this town.

Q. That is in the corporate limits of Pontotoc?

A. What?

Q. The new depot.

A. It is since the corporation was extended.

Q. It was extended before the depot was erected?

A. It wasn't extended before this old depot was down here.

Q. But it is now in the town of Pontotoc?

A. It is now in the corporation of the town of Pontotoc, but a part of it is in a suit, unless it has been decided in the Circuit Court.

Q. So wouldn't the schools and public institutions and everything that is beneficially affected by increased values be benefitted by having that created a town?

A. I don't know about that. That is a supposable case that I haven't got that far along; but another case is that if the depot is down here, it would be much more convenient for the schools that are established now than to come out from down yonder.

Q. Your schools are not affected by transportation facilities?

A. I think they would be if they found that transportation facilities were such that they could come and get off a short distance from the schools.

Q. Your children, however, do not come and go from the schools on trains in Pontotoc county?

A. No.

Q. Aside from the fact that you have to pay a little more drayage on coal and dry goods, has the fact that the depot location has been changed affected you at all?

A. No, sir, so far as it has affected me—how?

Q. I mean your property values and business.

A. I do not know that it has yet; but there is the fear of it over here all of the time that it will affect it, and we are trying to keep it off if possible—afraid that if it is located over there, that it will damage property interests. I think it is as plain as it can be drawn—not to answer rudely—I say I am sure that that fear hangs over us all the time that if it is kept out there, it will damage the property interests here so much.

Q. Now, while you consider your own and your neighbor's interests, in considering that question you have never for a moment taken into consideration the fact that this railroad company, while increasing your transportation facilities and putting you in touch with two other states and the whole community of the State of Mississippi, has expended a large sum of money—you do not consider that at all, do you?

A. I do, and I want you to understand one thing—I am am not against railroads at all. I am in favor of them. But I am against this railroad setting down on us like this and trying to injure us here in our property rights, and that is as far as I go, but I am in favor of the railroads, as a general thing.

MR. L. A. LATHAM, a witness sworn in behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Your name is L. A. Latham, is it?
A. Yes, sir.
Q. Where do you live, Mr. Latham?
A. I live here in Pontotoc.
Q. How long have you lived here?
A. I have lived here nearly four years.
Q. You got any business here?
A. Yes, sir.
Q. What business—hardware?
A. Yes, sir.
Q. Mr. Latham, what is the proximate amount of business that you do here in a year?
A. Why, I suppose from fifty to sixty thousand dollars.
Q. You own any property here?
A. Yes, sir.
Q. What property?
A. Why, I own considerable property here.
Q. Just state whether it is business property or residence property, and how many houses that you own.
A. I own the block that I am on, the store house, and another block down here and a ware house. That covers it.
Q. Any residence property?
A. Yes, sir. I have got two residences now built, and one going up.
Q. Just proximate the fair vaiue of your real estate holdings in the town of Pontotoc.
A. I suppose it would be worth fifteen thousand dollars.
Q. Now, what, in your judgment, would be the effect of establishing the depot over at what we commonly call the new site, upon your property values here, and the property values generally.
A. Well, I don't know whether I could show you what the decrease of values would be in it, because I can't tell; but we know from the burden of draying the stuff that it is considerable on the business. I do know what the decrease would be in the valuation with the depot here.

Q. Would you consider the property less, or more, valuable if the depot would be finally placed over yonder?

A. Less valuable, because the burden of drayage is on us.

Q. Now, Mr. Latham, tell us about the drayage business—if there was any difference between before the depot was moved and now?

A. I consider it nearly double.

Q. Have you some draying?

A. Yes, sir.

Q. You are in the hardware business?

A. I am.

Q. What was the condition of affairs here as to getting freight during last winter when the roads were bad, from the town to the depot?

A. Well, I don't know whether I could describe it, as it was so bad. The roads were impassable. Everybody who knows anything about them know that.

Q. Would you say that you were embarrassed or injured in your business by reason of the railroad being over there?

A. In getting freight away.

Q. How embarrassed.?

A. In the freight—to get it away and calling for the demurrage on cars—embarrassing in every way over there.

Q. Do you mean that you could not get your freight away?

A. Until they would demand demurrage on cars.

Q. Why couldn't you get it away?

A. The roads were so bad. I had two wagons myself—owned by myself, and hired every dray that I could.

Q. Were you present at any meetings that were held here between the officers of the railroad and the citizens when they were discussing this depot matter back in Colonel Merrill's day?

A. I think I was—probably one or two.

Q. Were you present at that time when a vote was taken on the matter?

A. What matter?

Q. On whether the depot should be down here at the old site or over at the new site?

A. I was here one time, I know, when they voted, but I forget whether it was to go over there or what the proposition

was; but I didn't vote.

Q. What was Colonel Merrill's statement with reference to putting the depot down here in the hollow?

A. He said there was no use even to talk about putting it down there—that it was not going there, that the people had better get what they could –that it wasn't going there.

Q. Did he state any alternative proposition, that if they did not put it out yonder, what they would do with the road?

A. That was the proposition, I think. He said they could build a road forty thousand dollars cheaper by running three miles west of here with a proposition that if they would consent to allow the depot to go yonder, they would come in here —that they didn't have any desire to leave Pontotoc—something like that, and I think that that was what I considered —that that influenced the people to vote, but still I didn't vote.

Q. You understood the proposition was whether they should come here where it is now or go three miles west?

A. Yes, sir, that if they would not accept that, that he could leave it three miles with forty thousand dollars less expense.

Q. Do you remember how the vote stood at that meeting?

A. No, sir, I think it was something like eighteen to seven, or twenty—I don't know.

Q. There was a majority for the depot to go where it is at, rather than go further west—rather than to be moved out there?

A. That was the proposition that I understood was before the house.

Q. You were present and did not vote?

A. Yes, sir.

Q. How many were present here and didn't vote?

A. I don't know. It was a proposition I did not accept, and I didn't vote because there was an overwhelming majority went the other way, and there was no need of my giving my vote the other way, and I didn't vote at all.

Q. Now, in your judgment, taking the business men of the town of Pontotoc—the property owners of the town of Pontotoc, what is the sentiment then and now among the property owners and business men as to where the depot should be located and where the line should be?

A. I don't think there is any question but what they all

want it back at the old site.

Q. Some change come over the spirit of their dreams?

A. Yes, sir.

Q. Caused by?

A. By this excessive drayage. Why, the drayage is double the rates in the winter. We can do nothing the way it is. There will have to be some arrangement made for the convenience of the town. I am having every bit of my stuff now shipped before the roads are bad.

Q. That would require a larger outlay of capital on your part?

A. Not necessarily—only the storage. It is all dated the same.

Q. Do you know anything about whether the traveling public has or has not been inconvenienced by the depot over there?

A. I would think it has.

Q. In what way?

A. A great many ways—I don't know; they all pay their passenger rate from the depot. I don't know.

Q. Have hacks been running continuously ever since that depot has been put over there?

A. No, sir. For quite awhile—for some days—they could not use a wagon.

Q. They put on a wagon?

A. Yes, sir, I rode in it myself.

CROSS-EXAMINATION BY MR RICH.

Q. Did you commence to buy property just after coming?

A. Yes, sir.

Q. Have you been buying ever since?

A. No, sir. I did so the first two years.

Q. Are you using it all?

A. I am using one house and renting the other.

Q. What is the difference now between the rentals now and two years ago?

A. I was not renting then.

Q. When was that house built?

A. It is not completed now. It started up two years ago —it is not completed.

Q. You commenced to build it after this controversy

came about?

A. No, I commenced building before that, but of course the bigger part of it has been built since the controversy commenced.

Q. Well, hasn't it all been built since the depot was burned at the old site?

A. I don't remember whether it has or not; I think may be it has.

Q. Aside from the fact that you are paying a little increased drayage and have suffered a little personal inconvenience in getting to and from the depot, that is the only change which has been noticed in the town of Pontotoc as the result of this change of the depot site, isn't it?

A. Why, I don't know; I could not—let's see—I don't know whether I understand the proposition or not—the inconvenience of it isn't over here.

Q. I say, it is simply increased drayage?

A. Yes, sir, and inconvenienced in a heap of ways.

Q. Well, what other ways now? I understand you to say that was all.

A. The drayage?

that was all.

A. The drayage?

Q. Yes, sir.

A. I don't know about the passengers. As far as my part of the passengers, it doesn't inconvenience my any. When I want to take the train, I am as close now as over here—closer.

Q. Just about as many come here now as before?

A. I suppose so.

Q. More now, since you have better railroad service?

A. No, I don't know about that. I don't know whether we have any better railroad service.

Q. I mean to say, you have increased mileage?

A. Increased mileage of railroads going south?

Q. Whose fault is it that you are not getting service over that mileage?

A. I don't know whether it is the railroad or the—

Q. You don't know who tied the railroad up?

A. I don't know nothing about that.

Q. Haven't you contributed to the lawyer's fees to tie

that railroad up in that condition?

A. I intend for the incorporation to have its rights—yes, I helped.

Q. Then you don't blame the railroad for not giving you the mileage when you say it can't operate its trains over a large part of it?

A. Well, I do not consider that we would be. So far, I would rather have the railroad stop here than to have the depot where it is at.

Q. You don't want any connection with the people south of here?

A. Not at the experience of what we have to take it at, I don't. I would like to have connection if we could get it properly, but I don't want it at the expense of what it would cost us.

Q. So, rather than pay fifteen cents increased drayage, you would rather be cut off from the connection with the southern part of Mississippi?

A. Yes, sir.

Q. Now, about the two roads— whose responsibility—who is responsible for the two roads?

A. That is a question I could not— Who is responsible for the bad roads all over the country?

Q. But this is in town.

Q. The people here have done the best they could unless they graveled them or planked them.

Q. Then whose fault is it?

A. I suppose the corporation didn't feel like they wanted to take the responsibility or expense.

Q. It wasn't the railroad's fault?

A. It was in requiring us to do it.

Q. Do you consider that if we had a first-class road constructed from the business part of town to the new depot, that you would be in a better condition for hauling and handling your freight than you would when the depot was at the old site?

A. No, sir, you could not make half as many trips.

Q. Yes, but you could haul heavier loads over the good roads.

A. No, sir, we do not haul them that way. We are not doing it now.

Q. That is because you haven't got good teams. Certainly

if you had better roads you could haul heavier loads.

A. Certainly, but that is not a bad road over the old site it is double drayage.

Q. Mr. Latham, you say you didn't vote at this meeting at all?

A. No, sir.

Q. Then, after that meeting was held, this railroad commenced to construct its line over the new route, didn't it?

A. Yes, sir. None of it ever did offer to come in here at all.

Q. It had spent a large sum of money before these suits were instituted, hadn't it?

A. I don't know anything about how the suits were originated.

Q. You know when this suit was filed, don't you?

A. No, sir.

Q. Last August a year ago—on the 3d of August, 1904. When did you employ Mr. Fletcher to get after this railroad?

A. I never have had anything direct to do with it—Mr. Fletcher's employment. I don't know anything about it at all.

Q. You contributed to the hiring of the lawyers?

A. I have through parties. I never spoke to Mr. Fletcher about his being employed. I never have contributed anything to Mr. Fletcher at all. I don't know that I have ever contributed anything to the lawyers' fee. I went to Jackson.

Q. I am sorry to hear that—everybody ought to contribute to a lawyer's support.

A. I don't think I have to this particular case.

Q. Well, you have contributed to the maintenance of this proposition, in a way, haven't you—to the lawyer's fee or to other expenses?

A. I don't know. It seems like there has been some little incidental expenses. It wasn't the lawyer's fee. I don't know what it was.

Q. Getting up surveys, hiring Mr. Finley to find a good route?

A. No, sir, I have not contributed anything to that.

Q. Well, do you know who did get up this fund—how many of them?

A. No, sir, I don't know anything about that.

Q. Who solicited money from you to pay expenses?

A. Why, Mr. Walker called on me for something. I paid him whatever it was. There was a little fee for something. It was not attorney's fee, I know.

Q. Well, you contributed to maintain this prosecution after the meeting at which you did not vote?

A. Yes, sir.

Q. Now, that meeting—the result of that meeting was one that would naturally 6ive the impression to Mr. Merrill and the other railroad officials present that a majority of that company were in favor of the new depot site, wasn't it? They voted that way?

A. Well, the proposition was put before the people—at the time they did, yes, sir. The people thought they would lose the depot, the railroad entirely. He misled them and said that they would go three miles down yonder for forty thousand dollars less.

Q. How was that misleading to you?

A. It was simply making a statement that we probably and did not understand. I didn't vote, but I know parties who voted for it did not. I know there are people who would not have voted then.

Q. You don't know, as a matter of fact, whether he was going out there or not?

A. No, sir.

Q. Do you know whether a survey had been made out there or not?

A. No, sir, I do not know that.

Q. Weren't there statements made—

A. That they had had a survey made.

Q. Didn't they have maps and papers here indicating surveys there?

A. I didn't see that. I only answered what I seen. I only know what they said. I know he said it would cost forty thousand dollars less than to come right here where he did come.

REBUTTAL EXAMINATION BY MR. FLETCHER.

Q. You were asked, Mr. Latham, about the town or the railroad Commission—somebody tyeing up the railroad. Do

you know why the railroad was tied up?

A. Why it was tied up?

Q. Yes, sir.

A. Why, the way I understood it—I don't know that I could particularly say, only just because they moved the depot out there. I know they didn't care for them to leave the town.

Q. Did you understand whether it was lawful or unlawful for them to operate the railroad out yonder?

A. The way that I considered it was that it was unlawful.

Q. So the tying up was just in having to obey the law?

A. Yes, sir.

Q. You stated that that road might be put in good condition by graveling or planking it?

A. Yes, sir.

Q. How much would it cost to gravel or plank it to reach to that depot?

A. I don't know how much it would cost. It would cost a sum.

Q. There has been some money expended on this road?

A. Yes, sir, four thousand dollars worth of bonds.

Q. Suppose the same amount of money, or half as much money, to have been spent in putting the road in condition the one to the old narrow gauge—what would be the comparative difference in the two roads?

A. We could have good roads.

Q. Which would cost the most to put in good repair, the road to the old depot, or the new depot?

A. Of course it would cost much less; it wouldn't cost more than a fourth as much to put the road in condition to the old site as the one to the new.

Q. You say that you have not contributed anything to the lawyer's fee that you know of?

A. No, sir, I don't think that I have.

Q. Have nothing to do with the employment of counsel in this case?

A. Not anything.

Q. And the only expense you have been out is a trip to Jackson you made as a member of the committee?

A. Yes, sir, and some small expenses that Mr. Walker called on me for. I don't know what it was for, now.

SURREBUTTAL EXAMINATION BY MR RICH.

Q. Did you ever build any roads?

A. Railroads?

Q. No, sir, public roads.

A. No, sir.

Q. You don't know anything about the cost of them?

A. No, sir.

Q. Establishing grades.

A. No, sir.

Q. You only estimate the relative cost of making the two roads by the length?

A. Yes, sir, and know what the expense has been in what they have already done.

Q. I understand you to say that you do not know how much of the four thousand dollars was spent on this road?

A. They tell me the bigger part of it is gone, and I don't know where it could be spent unless it was spent out there. It was general work, and I supposed there was a general fund for all that work.

Q. That is, of this case, you don't know.

A. I don't know from my own personal knowledge. I am not familiar with the books.

Q. You are not connected with the city government here at all?

A. No, sir.

EXAMINATION BY MR. FLETCHER.

Q. Isn't that the same hill that goes to the old depot that you have to go down to the new depot?

A. No, sir.

Q. The same ridge?

A. Ain't there a hollow between them.

Q. What is the difference between the steepness of the two hills, if any?

A. I don't know—no difference much between the two hills. If anything, Dr. Mitchell's hill is the steeper.

Q. That is the one going to the new depot?

A. Yes, sir; there was a hollow between the two.

Q. The town got into a lawsuit to grade it down?

A. Yes, sir.

Q. And hired our friend, Mr. Fontaine over there, to keep it down?

A. Yes, sir.

MR. W. P. BROWN, a witness sworn on behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. How long have you lived in the town of Pontotoc, Mr. Brown?

A. Since '72.

Q. Own any property here?

A. Yes, sir.

Q. Just state what property you own, whether it is business property or residence property, or both.

A. I own two brick storehouses, one warehouse, and a half interest in another,

Q. Any residence property?

A. One.

Q. Any lots that haven't buildings on them?

A. I have two cabins down here.

Q. Got any lots adjacent to your residence that are not occupied?

A. Yes, sir, one.

Q. Mr. Brown, what would be a reasonable valuation of your real estate holdings in the town of Pontotoc?

A. Well, somewhere about four or five thousand dollars —five thousand, I suppose.

Q. Now, Mr. Brown, what in your judgment would be the effect on the valuation of property—your property and other property—of the permanent establishment of the depot out at what is called the new site?

A. Well, I think it would decrease the value of it, especially the warehouses.

Q. Can you approximate how much, in your judgment?

A. No, sir, I could not, Mr. Fletcher.

Q. Well, why do you think it would depreciate its value?

A. Well, because I believe there will be other business houses to go up at the new site, and every dollar's worth of business over there would injure the town so much.

Q. What business are you engaged in?

A. Cotton business.

Q. Cotton buyer?

A. Yes, sir.

Q. Were you one at the time when the cotton was at the old depot?

A. Yes, sir.

Q. I mean when the old depot was the depot of the town?

A. Yes, sir.

Q. You are in the cotton business still?

A. Yes, sir.

Q. How much cotton, approximately, is purchased here each year?

A. We handled about twelve thousand bales last year.

Q. Where was that cotton weighed?

A. Down at the old depot.

Q. That is a cotton platform there, isn't it?

A. Yes, sir.

Q. Well, is there any increase in the cost of handling cotton by reason of the establishment of any depots?

A. Yes, sir.

Q. What increase.

A. Well, we paid from ten to twenty-five cents a bale on cotton. When the roads got bad we had to pay as high as twenty-five cents a bale.

Q. Mr. Brown, were you present at any of the meetings when Colonel Merrill was conferring with certain citizens about a change of the depots?

A. I don't remember that I ever was at any of them.

Q. Were you not at any of them?

A. No, sir.

Q. Were you consulted by any official of the railroad with reference to your wishes or views about the matter?

A. No, sir. I went with Merrill one day out here about half a mile beyond where the depot is now, and he said he wanted to put the depot there at Beckham's.

Q. That is over there west of where it is now?

A. Yes, sir. He said that is the nearest it could get.

Q. Do you know what the sentiment of the business men and others in the town of Pontotoc is with reference to where the depot should be situated?

A. Eighty-five per cent of them would vote for it to be here.

Q. Do you know anything about the construction of the railroad in Colonel W. C. Faulkner's days.

A. Yes, sir. We found out that we could raise fifty-five hundred dollars. J. W. Bell and myself were appointed a committee to go to Ripley and see Colonel Faulkner, and see what trade we could make with him. We met him, and he told me that if we could raise him fifty-five hundred dollars he would put a depot on one of the hollows, provided we give him the ground and fifty-five hundred dollars. We came back and selected a place right down here—the east side of town, and then we went down on the west side and selected a place. He then sent Mr. Harris down here and he decided that would be the best place.

Q. Why?

A. He said he could get out better on that side.

Q. Do you know whether the railroad officers at that time contemplated extending the road south?

A. Yes, sir.

Q. Where was it located then?

A. At Ripley.

Q. I mean, where was the depot located then?

A. Down here.

Q. At the old site?

A. Yes, sir.

Q. What was the purpose of that $5500?

A. To locate the depot and build the railroad here.

Q. Was that a written or verbal agreement?

A. I think we had a written contract.

Q. Do you know where it is now?

A. Mr. Carr had it last. I collected all the money and paid up Colonel Faulkner, and afterwards we had a meeting and turned it over to Mr. Carr.

Q. Do you know who drew that contract?

A. Colonel Faulkner and Mr. Carr, I think—or Mr. Fontaine

—some lawyers here. I don't know who it was, but there was a contract.

Q. Mr. Brown, when was that old railroad built here—what year? Can you state?

A. About 1889 or 1890.

Q. Somewhere along there?

A. 1888—I don't know—about there—several years ago. I couldn't tell from my memory.

Q. How long did it continue there?

A. Until last year.

Q. Is it in operation now?

A. No, sir.

Q. How much of it is not in operation?

A. Something like a mile.

CROSS-EXAMINATION BY MR. RICH.

Q. You have been here since 1872, you say, Mr. Brown?

A. Yes, sir.

Q. Has Pontotoc grown very much since then?

A. Yes, sir.

Q. When did it grow chiefly?

A. It has been actually growing ever since I came here.

Q. Been no checks in its growth?

A. No, sir.

Q. Houses been going up here all the time—number of stores and residences increasing gradaully?

A. Stores, most of them built since the railroad was built down here.

Q. There has been no cessation in that particular growth of stores having been built here in the last two years?

A. Yes, sir.

Q. Not as much as usual?

A. I don't know. Yes, Walker has built one or two down here.

Q. Hasn't the growth of Pontotoc—the general trend of values—been upwards, rather more pronouncedly within the last two years than heretofore?

A. I believe that is everywhere—not only in Pontotoc, but all over the State of Mississippi. I don't know that we have

any advantage over any other town.

Q. You subscribed—you and your associates subscribed fifty-five hundred dollars in all for the purpose of getting that railroad into Pontotoc?

A. That was the chief purpose, yes, sir, and locating the depot—we were to have the location of the depot.

Q. Colonel Faulkner was to select the location of the depot, as I understand?

A. No, sir. Mr. Bell and I made the contract, and we were to select the depot, and he was to put the depot on one of those two places.

Q. He was limited to two sites?

A. Yes, sir.

Q. And he was to select one?

A. Yes, sir.

Q. So, as a matter of fact, Colonel Faulkner selected the depot, and you and your associates did not?

A. I don't know about that. Mr. Harris—the railroad people selected one of two places.

Q. That is what I mean. When was your contract made—when the money was subscribed, wasn't it?

A. No, sir, I reckon not. I reckon he came down a few days after he was there. Mr. Bell and I came back and reported to the citizens what we could do.

Q. You never saw the contract?

A. I had the contract. I was secretary and treasurer, and collected the money and turned it over to Colonel Faulkner.

Q. Was that the subscription contract, or the contract for the building of the road?

A. He had nothing to do with that—with the subscription; we just went around and took up notes.

Q. Were all the people who subscribed for the fund informed exactly as to what it was to be applied to?

A. I don't know about that. I suppose it was.

Q. Well, now, wasn't there some agreement that you were to have certificates of stock for that subscription?

A. He never told me that he would give me any certificate of stock.

Q. Did you get any?

A. No, sir, not a dollar that I have ever seen.

Q. Did you ever tell Colonel J. W. T. Faulkner that you were to receive certificates of stock for that subscription?

A. That I had received it?

Q. No, sir, that you were to receive it?

A. No, sir. I don't think I did.

Q. Didn't you demand it of him?

A. No, sir.

Q. Sometime in February or March in 1889 or 1890, shortly after Colonel W. E. Faulkner's death, didn't you call Colonel J. W. T. Faulkner into your place of business and tell him that you were to receive certificates of stock under the terms of that agreement?

A. I have no recollection of it.

Q. And that you wanted your stock?

A. No, sir.

Q. Well, if that occurred, you have just forgotten about it then?

A. Yes, sir.

Q. What were the cotton receipts here, you say, year before last?

A. Year before last?

Q. Yes, sir.

A. Last year.

Q. Last year.

A. About twelve thousand bales.

Q. What were they the year before?

A. Between nine and ten.

Q. And the year before than?

A. I couldn't tell you without going back to my kooks. Not quite so much.

Q. You received no cotton here up to the time the railroad came here?

A. Yes, sir, I did.

Q. I mean no appreciable amount.

A. Yes, we shipped a good deal of cotton from here.

Q. Haven't your cotton receipts been increasing all the time since the railroad was constructed?

A. I don't know that they have. One year here before we got about twelve thousand. One year before that we got more than we did last year.

Q. I mean since the narrow gauge came in?

A. Of course, it has been increasing ever since.

Q. There has been no falling off?

A. Of course, during short years.

Q. But the tendency has been going upwards? You have been getting more cotton?

A. Yes, sir.

Q. You say it costs ten to twenty-five cents more a bale to handle it since the depot was moved to the new site?

A. I do.

Q. You mean the cotton buyer?

A. Yes, sir.

Q. The farmer doesn't pay it?

A. Of course, when we buy a bale, we have to figure it up.

Q. So you don't pay it?

A. Yes, sir, I do.

Q. You make the farmer pay it back to you?

A. I don't know that he does.

Q. If you figure it in the cost, he pays it?

A. Just like a man selling goods.

Q. Just tell me frankly—who pays that increased cost of handling it—you or the farmer who grows it?

A. The farmer, just like he pays the freight on a barrel of flour.

Q. He pays it?

A. Yes, sir.

Q. So it doesn't cost you a cent—the increased drayage?

A. If it wasn't for that I would pay him that much more for the cotton.

Q. That is his fear, not yours?

A. No, it isn't. The more I can pay him for his cotton, the more cotton I can get here.

Q. If he pays the increased cost of handling, and you have not lost any receipts, how has Pontotoc suffered any on that account?

A. You take a town near here where they don't pay that, and they will go there.

Q. Your cotton receipts haven't decreased?

A. Well, they will do so this year. I know cotton went to Ecru last year on account of that ten cents. We know that.

We got thirteen thousand some time ago.

Q. That was year before last?

A. The people at Ecru said they went there because we made them pay ten cents more.

Q. Are you the owner of the cotton platform at the old place?

A. I am part owner.

Q. It is owned by the company or partnership.

A. The company. Just this last season we bought it.

Q. You rent that cotton platform, do you?

A. No, sir.

Q. You charge the people for using it?

A. No, sir.

Q. It is only used by those of you who own it?

A. Yes, sir.

Q. It is not a public platform?

A. No, sir. If people bring cotton here and leave it there, they put it on there, and we don't charge them for it.

Q. Is there any other cotton platform here?

A. Yes, sir. It belongs to the railroad. They won't let anybody put it there until they get ready to ship it.

REBUTTAL EXAMINATION BY MR FLETCHER.

Q. Mr. Brown, how many store houses have been built in the last two years since this lawsuit started up?

A. I don't believe I know, Mr. Fletcher.

Q. Have there been any?

A. I reckon Mr. Walker built this one on the corner.

Q. Have there been any others?

A. Yes, sir. Mr. Latham down here, I reckon built his.

Q. You spoke about the loss falling on the farmers. If the loss falls on the farmer, then every farmer who brings cotton here will be damaged to that extent?

A. Yes, sir, and Ecru uses that as a lever.

Q. How far is Ecru from here?

A. Eight miles, I reckon.

Q. Do you know anything about whether their cotton receipts have grown since it has been removed?

A. I think they have grown.

Q. Do you know whether that fact, with the increased cost of cotton from ten to twenty-five cents a bale, has diverted cotton away from this market into other markets?

A. Yes, sir, I know it has gone from Spring Hill, out here to Ecru on account of that ten cents a bale. I went up there and bought cotton from the parties; they said that was the reason.

Q. The platform that the railroad maintains over there —what size platform is that?

A. I suppose it will hold three or four hundred bales. I don't know the size of it.

Q. Is that for the public, or for the public use?

A. For the railroad.

Q. When do they put the cotton on the platform?

A. Whenever it is ready to ship.

Q. You get your bills of lading when you put it on the platform?

A. Sometimes we do, and sometimes we have a great deal of trouble in getting it through.

Q. You have trouble in getting your bills of lading sometimes?

A. Yes, sir.

EXAMINATION BY MR. RICH.

Q. You pay the same price for cotton that Ecru pays?

A. I can't tell you, Mr. Rich, about that. I don't know what they pay up there.

Q. You don't know how many bales of cotton they got there last year?

A. I do not know.

Q. You heard somebody threaten to go over there?

A. They have gone; I think I stated that is the reason for their going—because they have to pay ten cents a bale.

Q. How much further do they have to go to get to Ecru?

A. I don't know the difference.

Q. So if the prices were the same, it really wouldn't make any difference to the farmers?

A. I don't know about that. You get some of these farmers' necks tore up about a town, they would go twenty miles to get away.

Q. Farmers are getting to know about you people?

A. Yes, sir, they find out a good deal about us. They find out a good deal about the lawyers, too.

Mr. J. H. SALMON, a witness sworn on behalf of the Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Your name is J. H. Salmon?

A. Yes, sir.

Q. Mr. Salmon, you are a member of the firm of Salmon & Wilson, I believe?

A. Yes, sir.

Q. What business are you in, Mr. Salmon?

A. A general merchandise business.

Q. Your business a retail or a wholesale business?

A. Well, we do probably a wholesale business.

Q. Now, Mr. Salmon, what volume of business or what amount of business, proximately, do you do in a year?

A. We do something like a hundred thousand.

Q. Do you know what was the effect upon your business in the way of increased charges, if any, since the depot has been moved out there at the new site?

A. Well, for the last six months we have not kept—in fact, I don't think we have settled with the draymen in the last six months, but there were two or three months after the depot was moved out there that we settled by the month. We had our draying done before that—got it done very cheap, but we had it done at seven dollars a month. Mr. Cruse did it for that before the new depot was built. The first month, I think, that it was drayed from out there, drayage amounted to eighteen dollars, or something; the second month it was about twenty-seven dollars. Of course, our drayage some months is about twice as much as others. It averages now twenty-five dollars a month.

Q. Do I understand, Mr. Salmon, that since the depot has been moved out there your drayage charges have increased over three hundred per cent?

A. Yes, sir.

Q. What effect will that have on your business, Mr. Salmon,

of the increased drayage? Is it favorable or unfavorable, and if so, why?

A. Of course it is unfavorable. It is against our business, of course. We have got to pay the drayage, of course, and then the country merchants have got to pay us that extra drayage.

Q. The merchants who buy from you?

A. Yes, sir. Of course that naturally comes out of them.

Q. Your branch of the business might be called the jobbing business?

A. Yes, sir.

Q. Mr. Salmon, what is your judgment—how much real estate do you own here in Pontotoc?

A. I do not know.

Q. You and your firm together?

A. I suppose we own ten thousand dollars worth. I wouldn't take that for it. I wouldn't take any less than that.

Q. What effect in your judgment, what difference upon the value of your property, and the property generally of the town, for the depot to be established, permanently, where it is temporarily established, as compared with the depot at the proper site?

A. It is hard to tell just what it would be, but decidedly it would be more than twenty-five per cent.

Q. Twenty-five per cent. depreciation?

A. Yes, sir. I think it would be as much as forty or fifty—a good deal depends upon it, of course; a man can't tell—that is my judgment.

Q. Now, Mr. Salmon, have you any other business except the mercantile business, wholesale and retail cotton business?

A. Yes, sir, I am in the cotton business.

Q. Are you in the cotton business as a buyer or grower of cotton?

A. Both.

Q. Are you president of the Pontotoc County Cotton Association?

A. Yes, sir.

Q. Now, how much cotton was bought and handled here, approximately, last year, if anything?

A. You know last year, you can't compare last year with other years—last year the receipts were so much, and all the

other places so much greater than it was before; but I suppose last year we handled something like—let's see—I think it was in the neighborhood of twelve thousand bales here.

Q. Is there any increased cost of handling, by reason of this change of depots?

A. O, yes, sir.

Q. Well, what amount?

A. Well, I pay ten cents a bale—and did usually when the weather was good or the roads were good. But when the roads got bad, I paid as high as twenty cents a bale. I could not get it moved for less. That was drayage.

Q. That was the cost of transporting it from the cotton platform at the old depot to the new depot?

A. To the new depot. I had to move it before we could get a bill of lading, though.

Q. Now, Mr. Salmon, at the time when the roads were bad last winter, was there any inconvenience to you, as a business man, in getting freights to and from the depot?

A. Yes, sir. We had some. Mr. Wilson runs the grocery department. I know we had right smart trouble in getting our freights over last winter when the roads were real bad.

Q. What do you think about the inconvenience to the traveling public, of the two depot sites, comparatively?

A. Well, I don't know about that. Of course, it would be very much more convenient to the town here—I think for Pontotoc—to have the depot at the old place.

Q. What about the public generally in the question of expense?

A. Everybody who takes the train here—everybody that gets freight here—it is more convenient for the country merchant to get the freight at the old place, than it is out yonder on account he has always got something else to put in his wagon. If he comes from this direction, he has to go away over there to get out and come back here. They usually have part of a load at our store and part of a load at the depot.

Q. You remember the time when the railroad concluded to move the depot here—to move it?

A. Yes, sir.

Q. Suppose you were to draw a line due north and south from the old depot that burned down, and go back to the time

when the railroad abandoned this line, how much more, if any, would the property east of that abandoned line that I suggested be worth than that west of the line?

A. How much more?

Q. Yes, sir.

A. That was before the new depot, I understand—before there was any improvement down on the east side.

Q. As far as percentage of houses are concerned, yes, sir.

A. Yes, sir; it would be, approximately, compared to price of property on this side. I don't know how to estimate it. There has been something like ten per cent.—something like fifty per cent. added to that part of town since they built the new road, you know, hasn't it? I suppose fifty per cent. of the property has been built over there since they built the new road. I don't know. That is my idea about it. I have never thought of it before. I would think that, comparatively, the value of property this side, east of the road, and west of the road, would be about ninety per cent. over here—something like that. Before—

Q. Before the depot was moved?

A. Before the depot was moved.

Q. Ninety per cent. of the business interests of the town were on the east side af that line?

A. Yes, sir, I think so.

Q. Were you present at any of these meetings that were held here.

A. No, sir; I did not attend.

Q. Any of the conferences between Colonel Merrill and certain citizens here?

A. Yes, sir. I don't remember whether I was up here or not. I don't think I was. I was in the store, and I think Mr. Wilson was up here at the meetings. I don't remember that I was up here.

Q. Mr. Salmon, what do you say as to the sentiment of the business men and property owners in the town of Pontotoc, with reference to their preferences as to the depot site?

A. Well, I think—of course, that is my opinion—I think that fully ninety per cent. of the business men on the square of Pontotoc would be in favor of the old depot. Fully ninety per cent., the property owners, well, I don't know, there might be

that much in the entire town, possibly. I don't know. I just give that as my opinion.

Q. Certain individuals in this town, as you understand it, are in the favor of new depot site, are they?

A. Yes, sir. Of course, we do not blame them for their opinion.

Q. What is the reason of the preference?

A. Of course, it is to their advantage.

Q. Why?

A. Why, the parties usually, of course there are some in favor of anything—anything that would tear down somebody else; but there are others who are in favor of it, who have property that they think would be worth more—own property over there. I don't blame them. I have nothing to say against them. They have their own preference. Let them own it over there.

CROSS-EXAMINATION BY MR. RICH.

Q. How long have you been in business here, Mr. Salmon?

A. I have been about twelve years.

Q. Started here in a small way, didn't you?

A. Yes, sir. In a tolerably small way.

Q. And you are today doing twice the business of a single merchant here?

A. I suppose so, yes, sir.

Q. And it has largely increased in the last two years?

A. Yes, sir.

Q. Your facilities have increased, your stock increased, and your room increased?

A. No, sir. We have not increased our room in the last five years. We have the same room we had five years ago.

Q. What about your stock?

A. Well, we have a bigger stock.

Q. You carry now twice as much stock as you carried five years ago?

A. Yes, sir, I suppose so.

Q. You say your drayage used to be done for seven dollars a month, and shortly after moving the new depot it was done for seventeen dollars a month?

A. Yes, sir, I think, or eighteen.

Q. How much of that is due to the increased difficulties

of doing the drayage, and how much is due to the increased amount of drayage?

A. When we first came here, we got drayage done for two dollars a month; and then it went up to three, four, five, six and seven.

Q. That was due to the fact that you were succeeding in business gradually increasing in every way. You don't expect to double your business and keep your expense?

A. I expect the drayage bill a little more, of course.

Q. So, as a matter of fact, the increased drayage was due to your personal success, rather than to any change in location?

A. Not so much, no, sir. Of course, I think perhaps ten per cent. might be due to the amount of business—being that much larger, but our business hasn't increased for the last few years over ten per cent.

Q. Has it increased that much?

A. Yes, sir.

Q. You are carrying a larger stock now than last year?

A. Yes, sir.

Q. Pontotoc has been generally getting along in that way?

A. Yes, sir; I suppose so.

Q. Notwithstanding the dreadful conduct of this railroad, you have been doing pretty well here all the time?

A. This railroad—I have always been friendly to the railroad; they have always treated me mighty nice, as far as my part of it is concerned. Of course its people very often have a little more business to attend to, and they can't give you every attention that you might like to have, but they do all right so far as treatment is concerned.

Q. You say you paid last year, at times, twenty cents on drayage from the old to the new depot site?

A. Yes, sir.

Q. That was due to the lack of good roads?

A. Yes, sir.

Q. If the government of the town of Pontotoc was doing its duty by the citizens, and had good roads here, that wouldn't have occurred?

A. Well, they made an effort to get good roads, but they would get worse instead of better.

Q. They don't do it in bad weather?

A. It was almost impossible for them to fix it in so short a time. They needed more time. The weather was extra bad, and they did the best to fix them.

Q. That was the lack of a good road?

A. Yes, sir, that is what it lacked, of course.

Q. The increased cost of handling cotton to and from the old depot to the new depot would not have been very great, if you had had good roads?

A. You have got to pay ten cents?

Q. That is for handling it at all?

A. Yes, sir.

Q. Whether it is to the new or to the old?

A. No, that is wrong. Heretofore, before the new depot was built, we didn't pay any drayage at all. The cotton platform was connected with the roadway. All you had to do was just to truck it over there. We didn't pay any drayage at all. I understood Mr. Brown to say that the farmer paid that ten cents. I don't think the farmer is charged up with any of it; at least—

Q. It is like the drummer's overcoat, it is not in the bill, but it is paid for?

A. Yes, sir.

Q. Mr. Salmon, I understand you to say that there were some people about the town of Pontotoc who were in favor of the new depot site?

A. Yes, sir.

Q. And that their reason is that they own property over there—that they think it would be increased in value by it?

A. Yes, sir.

Q. That is exactly your reason reversed, for insisting upon having it at the old depot site.

A. Yes, sir.

Q. Have you considered the fact that between those two interests the railroad is about to get the worst of it, or have you considered its interests at all?

A. If you want my opinion about that, I think this that Pontotoc here was built with the expectation that the depot should be over there, and I don't believe in tearing down one interest to build up another; I don't believe that Captain Merrill, when he was here, represented the case of that road as it should have been; I think he represented it would cost thirty-five thousand-

and dollars more to build it down here than over yonder; his man has got to show me that before I will believe it.

Q. You understood that that track was constructed, and that grade established, with the view of operating a road from Middleton to Pontotoc?

A. Yes, sir.

Q. And Mr. Middleton was talking about establishing a railroad from Jackson to Tennessee, and that he would have to consider the distance he would have to carry the load he took on at Mobile? That would make some difference.

A. Yes, sir.

Q. In other words, you considered it from your immediate environment without taking in the whole situation?

A. Yes, sir.

Q. You were looking at it from the Pontotoc standpoint?

A. Yes, sir.

Q. And not from the standpoint of a man who is building a railroad four hundred and eleven miles long?

A. Yes, sir; I would do whatever I could for the road, and I expect to do a great deal more if we continue in business. We don't want to get any fight up with the road.

Q. Now, this statement of yours—this opinion of yours—expressed about decreasing the property values, as the result of changing the location of the depot, is mere speculation—I mean by that, you have no basis, any particular fact—for that opinion?

A. I will tell you my basis: I will give you my reasons; of course they may not be good ones—it is a speculation: I would think that with the depot over there, there is some probability of division. Of course, if you make a division, you have got to cut the value of your property over here fifty per cent., at least; that is a fact; I think I know that; because whenever you divide a business, neither place ain't worth nothing. Nobody would perhaps make anything. I would rather not have a business that you can't make nothing out of.

Q. On that principle, what has become of all the growing towns of Mississippi? They are dividing them?

A. There is plenty over here for all the business interests that this town needs for a long time.

Q. And so far as Salmon and Wilson, or other leaders are concerned, the affairs are all right now?

A. I don't care who leads so long as you do legitimate business and treat everybody right.

Q. You are very anxious to see a wholesale establishment to put up over at the new depot?

A. I wouldn't give a pop of my finger. Of course it would be this way: We would get more competition, but we might sell more goods. The fact of the business is that we sell all of the business that we are able to sell; because we have to carry half of our customers half of the time, and we would like to have another wholesale house here. Because we would get more business; another wholesale house over there wouldn't hurt us more than one right here. There are two at New Albany, and they don't hurt us at all.

Q. Then it all comes back to the question of drayage?

A. Yes, sir.

Q. And a good road would remedy that largely?

A. It would help.

REDIRECT EXAMINATION BY MR. FLETCHER.

Q. What would it cost to make two good roads from here to the depot, Mr. Salmon, that would be passable?

A. How much did we put on those roads last year?

Q. I can't answer that because I am not testifying.

A. I don't know what we put on, but I know they didn't use all that they had; but it seems to me to make it like it ought to be, it would take about—two good roads—it would take at least ten thousand dollars.

Q. Upon the idea that we put twenty-five hundred dollars on that road to make it in good condition, what would it cost?

A. We issued four thousand dollars in bonds. It looks like that ought to be one, with what they have already done. It looks like we ought to level it up and gravel it for five thousand dollars.

Q. That for one road?

A. I don't know how cheap you could get work like that done at, estimate it at eight thousand dollars—seven or eight.

Q. You say you came to the town of Pontotoc ten or twelve years ago, and bought property here?

A. Yes, sir.

Q. Where was the depot at that time?

A. Down at the old site.

Q. What effect did the fact that the depot was located there have upon your choice of a place to put up a business house?

A. Well, at that time, of course, I got the place where I wanted it, but the railroad company had a great deal to do with our success in business, of course. If it hadn't been for the railroad, we couldn't have done the business here we have done, by a good deal.

Q. What per cent. of the business houses in this town were built before the depot was changed?

A. About the time I came here, they generally commenced building all around.

Q. What per cent. of the business houses?

A. I expect there has been fifty per cent.

Q. What per cent. of the business houses in the town of Pontotoc were built before the depot was changed?

A. Well, they have been built since that time, Latham's house, down here, and I believe it was started before the depot was changed, wasn't it? I don't know. There have been no new houses. Well, Walker built that little corner building there. There haven't been any new buildings in a way of business houses. That house of Latham's is used mostly for a warehouse, I think.

O. C. CARR, a witness sworn on behalf of the Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Mr. Carr, you live in the town of Pontotoc?

A. I do.

Q. How long have you lived here?

A. All of my life.

Q. How long has that been?

A. Sixty-seven years ago.

Q. Mr. Carr, you are an attorney at law, are yon?

A. Yes, sir.

Q. Have you any other business or business interestt?

A. Well, my son is running a mercantile business here in my name.

Q. You own any property here, Mr. Carr?

A. Some.

Q. Just state what property you own—whether it is business property or residence property, or both.

A. I own some residence property and some brick buildings here—storehouses.

Q. How many storehouses do you own?

A. Five or six—I don't know. This block over here, except two in it, and then two over there.

Q. How many residence buildings do you own?

A. Three or four, four or five.

Q. Now, Mr. Carr, what would be a fair estimate of the value of your real estate holdings here?

A. I suppose they would be worth fifteen thousand dollars, or more.

Q. Mr. Carr, were you in any way connected with the alleged agreement about the location of the depot here when Colonel Faulkner was building his new line?

A. Yes, I was interested here. I took an interest in it and began the establishment of the road.

Q. Just state what you feel like saying about your understanding of that matter, please.

A. Well, Colonel Faulkner came here representing his road. I wanted him to build it down over here, and my understanding was to offset it, you know, afterwards; and we made him a proposition that if he would build a road through Pontotoc about as roads generally do, that they would get together a subscription. We gave them fifty-five hundred dollars to bring it here within the corporate limits of the town of Pontotoc in either one of these hollows.

Q. Now, let me ask you right here: Were the corporate limits of the town then as they are now?

A. No, sir; they have been extended—put out a good deal—a quarter of a mile or a half a mile more.

Q. Now, the new depot, was that in the corporate limits of the town at the time Colonel Faulkner built this road here?

A. It was not.

Q. Go ahead with your narrative.

A. Afterwards it was determined by consultation with the railroad officials and the citizens that the depot should be located here in this hollow at the old site where the depot was burned several years ago, for which we paid fifty-five hundred dollars in money.

Q. I will get you to state that again. What was the con-

sideration for the payment of that fifty-five hundred dollars?

A. That the depot should be taken there in the hollow where it was burned.

Q. Was that agreement reduced to writing?

A. It was. I had a copy of that agreement. I won't say absolutely certain that I did, but that is my impression—that I wrote it, and submitted it to Colonel Faulkner, and it was left with the committee, or at least it was left with three or four—only three of us—Bell and myself or Brown, I don't remember which one had it.

Q. Have you made an effort to find this, Mr. Carr?

A. I have searched carefully through all of my papers and where such things are likely kept by me, and I can't find it. I looked for it before the suit was instituted, and several times since, but I can't find it.

Q. How long was that railroad maintained there, Mr. Carr, as it was located by the Gulf & Ship Island Railroad Company?

A. O, it was established there in 1887, I believe, if I mistake it not—I may get a date wrong—and it was maintained there until it was moved over to the present site.

Q. Was that before or after the institution of the litigation?

A. It was before this suit was instituted it was moved.

Q. This suit that we are taking the testimony in?

A. It was before it was moved.

Q. Was it before or after the litigation in the Federal Court that it was moved?

A. I believe it was not moved when that occurred, because that was an injunction to prohibit them from moving it, is my recollection, in the Federal Court. No, I am wrong about that. It was moved after the institution of the proceedings in the Court.

Q. In the Federal Court?

A. Yes, sir.

Q. Now, Mr. Carr, were you familiar with the negotiations or alleged negotiations between Colonel Merrill, the former president of the defendant company here, and the citizens of the town of Pontotoc, with reference to the depot locations?

A. Well, now, they have been talking about public meetings. I don't think we ever had a public meeting. That was narrated as going to have a public meeting of the citizens of the town, and my idea is—I generally keep my office over there on the east

side—and if I ever heard of a meeting it was not by a summons or notice that they were going to have a meeting, but I simply found it out by chance and came up here.

Q. It was a kinder of a dark lantern affair.?

A. It was a select few.

Q. Were you present at any meeting in which a vote was taken squarely between the new and the old depot sites?

A. By whom?

Q. The people present at the court house?

A. I was present on one occasion. The only notice thatI got was that Merrill was going to come and have a meeting. Sometimes I would hear of it in the morning, and sometimes only an hour before, and sometimes he would come down on the train and we would have a meeting. At that meeting—on one occasion I was here, not by invitation though, because you understand, I was not in favor of moving of the depot—and Mr. Merrill made a speech, and I volunteered and answered him as well as I could, about the locating of the depot, and he said, in my recollection now, that it would be run sorter west and not in this hollow, and that they couldn't get out of this damned hollow down here. At that meeting—the time that I was here and voted—it was discussed pro and con. Someone suggested that it was right well attended by various people, not only the town people but the country people as well—and suggested that all were to line themselves on the south side of the courthouse who were in favor of the depot remaining where it was, and those who were opposed to it to line themselves on the north side, and I think three-fourths of them were on the south side of the house.

Q. Three-fourths of them in favor of keeping it where it was?

A. Yes, sir; I think so.

MR. RICH: That was the meeting that I attended?

A. I don't remember whether you were there or not.

MR. RICH: That was the cold February day?

A. I think you were here Colonel.

MR. FLETCHER: Was that the meeting, Mr. Carr, when the Railroad Commission was here?

A. Well, I am not certain about that, but that is about the meeting—the only meeting that I ever saw or heard of them being present that I know of personally. There may have been other votes taken. I think maybe there was some other expression of

the sentiment of the crowd present, but I don't know that I saw it. I know I saw it when you were here, Colonel.

MR. RICH: That was after we were well into the quarrel?

A. Yes, sir; that is right.

MR. FLETCHER: Now, Mr. Carr, then there was no occasion in Pontotoc when the location of this line was entirely prospective. Do you recall any meeting in which you were present and in which Colonel Merrill made any statement in the summer before?

A. Well, he was here on one occasion before it had been settled upon or before possibly there was any special action taken in the matter, and at that meeting I was under the impression that he wanted some money. I didn't think that he was going to try to change the depot, but I thought he wanted some bonus to come here. I informed him—I had a conversation with him before there was any litigation at all—that we could not possibly submit to the depot being moved, that we had paid for its being put here, as we understood it, and could not concede to its being changed, that I thought it would be greatly to the detriment of the interests here, and could not agree to it, and he then wanted to carry it half a mile further west, and we went out there and viewed the grounds, and he then stated positively on that day, that he could not go any nearer town than that, and that was a mile away, or a quarter of a mile further than where it is now.

Q. Mr. Carr, did the railroad authorities—the officials of the road—Colonel Merrill and the others—have notice that there would be opposition to their moving the depot?

A. O, they did. I told Merrill myself, and it was thoroughly understood that we were to litigate any effort to change the status of things here.

Q. Mr. Carr, what effect, in your judgment, will it have upon the business interests of the town of Pontotoc, as at present established and as it was established when the depot was changed, to move it out there?

A. I think it would probably depreciate property fifty per cent.

Q. State your reasons for thinking so?

A. O, well, it would depreciate rents. The price of property is based upon what it brings. And it would build up a competitive town over there and divide the interests, and property

on this side would not be so remunerative and therefore wouldn't be worth more than half the money it would bring now. It would not bring more than half what the price is now.

Q. I will ask you if it isn't a fact that the greater part of the business part of the town has been built since the narrow gauge road has been built down here?

A. Yes, sir; it has been changed very much. The houses have been improved very much. It has been almost all rebuilt. There were shanties where there are brick houses now.

Q. That was built with reference to the location of the depot as it then was?

A. Yes, sir.

Q. Now, Mr. Carr, do you know anything about this drayage question that has been discussed here?

A. O, I don't know anything more than what has been said about it. It increased the drayage of my mercantile house. We used to pay twenty-five cents where we are paying forty cents now. I think that isn't as large as the inconvenience of the situation.

Q. You feel that you can adequately describe the condition of the roads here last winter?

A. O, they were almost impassable, sir. Really, they had to resort to wagons—road wagons—to carry the passengers and in two days of that time I don't think they could get across it. The road from here through was very muddy and the horses mired down, and it was impassable. That was all for two days, and then it was passable after that.

Q. Mr. Carr, do you remember when the old depot was burned?

A. Well, it was the fourteenth day of December—my recollection. I don't remember the date. Somebody may know the exact year.

MR. RICH: 1903, wasn't it?

A. 1903.

MR. FLETCHER: It must have been earlier than that.

MR. RICH: 1902, then.

A. That is stated correctly there in the paper. I brought the action about 1903. That is about right.

Q. The town, then, was without depot facilities for about a year—something like that?

A. Yes, sir; very poor.

Q. Then it was moved in the spring of 1904—summer of 1904?

A. Yes, sir.

Q. Mr. Carr, are you able to state what is the sentiment of the property holders and the business men of the town of Pontotoc proper as to the advisability of changing the depot sites and changing the line of the railroad?

A. Well, sir, I can only give you my opinion. I have circulated amongst them and talked to several about it. The people are generally pretty timid about asserting an opinion to a thing that they know—think—is going to succeed, and have been reluctant in expressing their opinion, though I think there would be, at least, if they are left unprejudiced and uninfluenced by any sentiment in the matter—between eighty and ninety per cent. of them would favor the depot being down under the hill if it could be done.

Q. Now, something has been said here, Mr. Carr, about the cost of putting the respective roads in good repair. Going from the courthouse and center of the town to the old depot and the new depot, what would be the comparative cost of putting the road to each of those places in the same condition?

A. O, I think that the road from here to the old depot could be built for one-tenth of what it could be built and put in repair from here to that depot. One-fourth even considering what has already been spent. It is but a little way, right under the hill there a few hundred yards. The other ridge is three-fourths of a mile, I reckon. It is across cross-roads and three or four hundreds yards beyond.

Q. Do you know that is the distance from whe south terminus of the narrow gauge up to the point beyond?

A. I haven't made the measurement.

CROSS-EXAMINATION BY MR. RICH.

Q. Mr. Carr, have you had any experience in road building?

A. No, sir; only these little country roads and farm roads.

Q. Your general reading, though, on that subject has taught you that it is an exact science and a very high science?

A. Yes, sir.

Q. And it is not everybody who knows how to build a good road?

A. Yes, sir, I know a little about surveying, but I don't

know anything about building a road.

Q. Then, you really don't know, considering the topography and geography, what the cost would be?

A. It is opinion purely.

Q. And that opinion isn't based upon actual scientific knowledge of the situation or grades?

A. Only good practical sense.

Q. Removing dirt or anything of that sort?

A. Only the declivities in the road.

Q. Based largely on common sense of distance, isn't it?

A. Yes, sir; and it isn't so difficult to build a road down there.

Q. Now, then, you used the freight depot under the hill? That depot is under the hill—the old depot site is under the hill upon which the town of Pontotoc stands?

A. Yes, sir; under the mound—right smart mound.

Q. How would you go about grading the road from the old depot to the town without getting rid of that hill?

A. I don't know. It is not more than—well, I don't know.

Q. How much higher are we now from the old depot site —I don't mean the upstairs, but the ground upon which the courthouse stands?

A. That very often deceives you. You know it is a natural declivity from here up there. I could not say how much it was, and you are very apt to be deceived as to how far it is.

Q. You think it is about fifteen feet?

A. I couldn't tell you.

Q. You think it is twenty-five feet?

A. I couldn't tell you. I do not think, though, it would be more.

Q. You would be surprised to think it would be fifty?

A. Yes, sir; I would, and I would have to look at the compass.

Q. Well, now, Mr. Carr, have you ever considered how long and how high the hills are that would have to be cut down by this railroad to get out of that hole?

A. No, sir, but I have seen them cut and tear one down in order to get over to this other depot. O, the railroad—I thought you meant the town. No, sir; I have not.

Q. In all of your calculations, you have simply considered

the effect upon the town, the value of the property and the conveniences of the people living in this immediate community? You have not considered the effect upon the railroad revenues?

A. I don't know that, but of course, I have never had the —I have never understood the interests of the railroad particularly as to the getting in and out down here, but I based my opinion upon that Colonel Faulkner's idea of going to Houston, and he was a man of fine judgment.

Q. He was not an engineer, was he? Didn't he have an engineer?

A. Yes, but he knew a little of everything.

Q. But at the same time, that is a technical and exact science that nobody knows unless he makes it a life-time study. But don't you understand that the M. J. & K. C. Railroad Company has a community of interest with the people of Pontotoc in development of this railroad?

A. They don't seem to have had in this matter.

Q. Doesn't the prosperity of that railroad in this locality depend upon your psroeperity and your neighbor's?

A. I think so.

Q. Entirely so, doesn't it?

A. My prosperity entirely—not so. I lived here all my life without a railroad.

Q. I am not asking you about your prosperity, but I say doesn't the railroads prosperity depend entirely upon yours?

A. Yes, sir; you are correct about that.

Q. Then you do not question that it would be both the purpose and the wish of the railroad people to do the best they could for the town of Pontotoc?

A. Yes, sir.

Q. A man is controlled largely by his interests?

A. Yes, sir.

Q. Now, understanding, Mr. Carr, understanding that the railroad's prosperity is dependent upon yours, and largely, too, upon its contribution to yours, don't you think that there ought in fairness to be considered the railroad interests by the people of Pontotoc?

A. The railroad interests?

Q. Yes, sir.

A. It ought to be fairly considered. But let me state right

here now, that we, the people of Pontotoc, think that we have contracted with the road to go to a certain point, and we don't think that it devolves upon us to sacrifice what rights we have under that contract for the purpose of enhancing or saving a few thousand dollars to a railroad.

Q. Now, Mr. Carr, in June, 1903, when Mr. Merrill first came to the town of Pontotoc with the engineers, didn't you accompany that survey party to some point over here?

A. No, sir; when he said he could not locate it over yonder —Yes, sir, oh, yes, sir, he had made no location—yes, sir, I was there.

Q. Weren't you here in the court house at that time?

A. Come by here, I think. I was.

Q. Wasn't there a vote taken at that time?

A. I wouldn't say that there was or was not. I don't remember.

Q. Well, now, the vote that you refer to—

A. But I want to say right here now, emphatically, that there never has been a moment since we paid the fifty-five hundred dollars, that I have ever for one moment contemplated agreeing with anybody to change the location of the road.

Q. Mr. Carr, have you been one of the small number of men who have maintained the prosecution in this case, haven't you?

A. No, sir, the State of Mississippi has been maintaining the prosecution in this case.

Q. The State of Mississippi is furnishing the title in this case?

A. And furnishing the moneys.

Q. Haven't you and a few other citizens of Pontotoc furnished the money?

A. No, sir, very little.

Q. You have paid for surveys, haven't you?

A. Yes, sir; we paid ten dollars for one survey.

Q. To Mr. Finley?

A. No, sir. I haven't paid Finley a cent; I don't know that anybody else has. I paid Dozier ten dollars. Two or three men told me we had to pay it when he came over here for the surveys.

Q. Have you employed counsel, too, in this case?

A. Yes, sir, a few of us have done that—at least, we agreed to pay it. I don't know whether we will ever pay it or not, but

we agreed to pay it. There hasn't been much money spent, Mr. Rich, very little.

Q. Well, you don't have to pay much money to prosecute a railroad?

A. Not when we have got the State of Mississippi back of us. I will say right now that I would not have been in this litigation for a moment unless the State of Mississippi had taken it up, because I have too much sense to stand up against a corporation that has its millions behind it.

Q. I will ask you this question, Mr. Carr: This subscription was a private subscription of fifty-five hundred dollars?

A. Yes, sir.

Q. The town of Pontotoc, as a corporation, or an organization, has nothing whatever to do with it?

A. No, sir.

Q. Neither the mayor, council, or anybody?

A. Private. Anybody contributed that wanted to, and there wasn't so many of them, but at last a few of us gave the money. I gave some.

Q. A good many people outside of the town contributed?

A. I don't know of anybody now. There might have been. I don't know of anybody. I don't believe they did. There may be a few dollars of it—not much.

REDIRECT EXAMINATION BY MR. FLETCHER.

Q. You started to say something about Colonel Faulkner's idea about extending the railroad further south, when you were interrupted. What were you going to say?

A. I said Colonel Faulkner intended to run a road through—so he told me—and I think he made an agreement with Houston, and he never thought about changing the location of his road, and he would never have done it if he had lived.

Q. Didn't you understand that Colonel Faulkner had investigated the business of going south from here—from this line?

A. I don't know about that. He only spoke of going to Houston from here. I think the people of Houston did try it once or twice, and maybe they seemed settled on some terms, but I am not certain about that, either. But I know it was Colonel Faulkner's desire to run the road clean through, and he

never expected it to stop right here at Pontotoc. That is my impression from what I knew of him.

S. C. DANIEL, a witness sworn on behalf of the Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Mr. Daniel, how long have you lived in Pontotoc?

A. About five years. A little over five years.

Q. What business were you engaged in here for the first, say, four and a half years?

A. I ran a dray wagon for the first four and a half.

Q. I believe you are not in that business now?

A. No, sir.

Q. Were you engaged in hauling goods—running a drayage business from the old depot?

A. Yes, sir.

Q. Were you engaged in that same business after the depot was moved?

A. Yes, sir, for awhile—for something like six months—after that, maybe a little longer.

Q. I wish you would state whether the change in the location of the depot had any effect upon drayage charges, so far as your part of it was concerned.

A. Yes, sir; when the depot was down here in the hollow, they paid us two-bits a load for hauling, and when they moved over there, they paid us fifty cents.

Q. Did that additional charge have anything to do with the road?

A. Yes, sir. It was so much further we could not haul for the same price.

Q. What time was the depot moved, Mr. Daniel—what month, do you remember?

A. I think it was in June or July, as well as I remember.

Q. And as soon as the depot was moved you made that increase in drayage charges?

A. Yes, sir; as well as I remember. I am not positive that that was the month that it was moved in.

Q. That was before the roads got bad, though?

A. Yes, sir.

Q. Now, did you do any cotton draying?

A. Yes, sir; I hauled some, I know, last fall.

Q. Where was that hauled from?

A. From the old depot site down here over to the new one.

Q. What was the charge per bale for doing that draying?

A. Ten cents a bale.

Q. And is that the charge that was maintained through the season, or increased?

A. No, sir, it was after the road got bad. They paid fifteen cents, and after I quit they paid twenty cents.

Q. Why did you quit hauling cotton at fifteen cents?

A. Because there wasn't enough to realize anything out of it, and I thought I would not haul any more.

Q. Could not afford it at that price?

A. No, sir, not after the roads got like they were last winter.

Q. Do you know whether that increase was general among the other draymen here?

A. I think it was. I understood that they give that much to the others. I don't know.

CROSS EXAMINATION BY MR. RICH.

Q. How long were you in the drayage business, Mr. Daniel?

A. About four and a half years, I think about that.

Q. Did you commence to haul from the new depot at the old price—at twenty-five cents a load?

A. No, sir.

Q. You put it up immediately?

A. No, sir; the first load hauled from there it was forty cents.

Q. All the other draymen charged the same?

A. Yes, sir.

Q. You had some agreement?

A. Yes, sir.

Q. Like all other good business men, you availed yourselves of a new situation to get an increased price for your services?

A. We charged more because we could get more for it.

Q. You didn't quit hauling because the railroad depot was moved?

A. I didn't quit hauling freight because the roads got bad. I quit hauling cotton because they got bad.

Q. You did not quit hauling cotton because you were not doing well at the time? If you had had good roads—

A. If I had had good roads I would have kept at it.

Q. The location of the road did not keep you from doing good business?

A. Bad roads, I reckon.

Q. That was the fault of the town of Pontotoc, Mr. Carr, Mr. Bell and Mr. Fletcher, and all of these prominent gentlemen around here who run this town didn.t keep their roads in very good fix?

A. They didn't do it last time.

Q. Your complaint is against them and not against the railroads?

A. Yes, sir; I reckon it is.

Mr. Fletcher here objected to the above manner of examining.

MR. JEFF WILSON, a witness sworn on behalf of Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Mr. Wilson, your name is Jeff Wilson?

A. Yes, sir.

Q. How long have you lived here, Mr. Wilson?

A. All of my life.

Q. You have lived here as much as thirty years?

A. I guess, yes, sir.

Q. You are a member of the firm of Salmon & Wilson?

A. Yes, sir.

Q. What business are you engaged in, Mr. Wilson?

A. In a general merchandise and jobbing business.

Q. Wholesale and retail?

A. Yes, sir.

Q. Mr. Wilson, do you know—and what, in your judgment, would be the effect upon your business, and the business of the town, of having the depot located where it is now, permanently located, as compared with the old site you mentioned in the way of drayage?

A. You mean in the way of drayage?

Q. Yes, sir; in the way of drayage.

A. The drayage is about three times as much.

Q. Do you know anything about whether yourself—your firm, and the other business men of the town, were embarrassed or inconvenienced last winter when the roads were bad by reason of the depot being out there?

A. Yes, sir.

Q. In what way?

A. Bad roads, almost impassable.

Q. Any difficulty in getting freight?

A. Yes, sir.

Q. How much business do you do down there, Mr. Wilson, approximately, annually?

A. Something over a hundred thousand dollars.

Q. How much real estate does your firm own?

A. About ten thousand dollars, I guess.

Q. What effect upon you will it have—the permanent location of the depot, have upon the value of your real estate, in your judgment?

A. I think it would cut it down forty per cent.

Q. Now, do you know—were you present at any of these railroad meetings, held between Colonel Merrill, the former president of this company, and the people here?

A. Yes, sir.

Q. How many of these meetings did you attend?

A. Several of them. Three, I think, two or three.

Q. Were you present at any time when a vote was taken as to the sentiment of the people between the two depot locations?

A. Yes, sir.

Q. Do you know how that proposition was stated to the house at that time, and how the vote was taken?

A. All who wanted the depot down here, came over here on this side, and all who wanted it over there, to go over on the other side.

Q. What was the result of the vote?

A. One hundred and forty to twelve, my recollection.

Q. That was in favor of which proposition?

A. The old site.

Q. Were you present at any other time when the vote was taken on the proposition?

A. Yes, sir.

Q. How was the proposition stated then?

A. They took a vote on having it over yonder, I think; just a few here, twenty-five or thirty.

Q. How did that vote stand?

A. I think about twenty to seven. I believe it was over yonder.

Q. As against seven in favor of what?

A. There were some country people in it who voted for over yonder. Those in town didn't know anything about it.

Q. How were those seven?

A. They were voting to be back at the old site. Didn't anybody know anything about that meeting, though.

Q. Just state under what conditions that meeting was called—whether it was generally attended or not.

A. No, didn't anybody seem to know anything about it.

Q. Sorter dark-lantern affair, was it?

A. Yes, sir.

Q. Kinder of a star chamber proceeding?

A. Yes, sir.

Q. Did everybody present here vote who were present?

A. No, sir; I didn't for one.

Q. Do you know, Mr. Wilson, whether the railroad company had any notice about the fact that the citizens here would contend for the depot at the old site, during all this time?

A. How was that?

Q. Do you know whether there was any notice given to the railroad officials that there would be an effort to hold the depot down here where it was located before?

A. Yes, sir; there was.

Q. Now, what did Mr. Merrill say in that meeting, where the twenty to seven vote was taken, or any meeting, with reference to his intention about the depot?

A. He said if we didn't vote for it to be over yonder, he would take it three miles west. That was the trade he made.

Q. That was—that he would take it three miles west?

A. Yes, sir.

Q. Was that before or after work had been commenced on the railroad?

A. Before.

Q. Was Colonel Merrill notified that there would be an effort

made to hold the depot down here at the old site before any work was begun?

A. Yes, sir.

Q. Now, Mr. Wilson, do you know anything about whether the public generally inconvenienced by reason of the depot being located over yonder—the travelling public?

A. Yes, sir; a whole lot.

Q. In what way?

A. In travelling, and every way you can think of.

Q. You are reasonably acquainted with the travelling men who come here—the commercial men?

A. Yes, sir.

Q. Do you know how they speak about it?

A. Yes, sir.

Q. How?

A. Most of them want it down here. Sometimes it takes fifty cents to get over town and sometimes they stay over an extra day.

Q. Did the hacks run all of the time?

A. They didn't last winter. They could not travel all of the time.

Q. Do you know anybody who was inconvenienced by that fact—the travelling men?

A. Yes, sir, a whole lot of them. It was simply every man, I reckon.

Q. Do you know Mr. Adams, who travelled for the Armour Packing Company?

A. Yes, sir.

Q. Do you know anything about his inconvenience?

A. Yes, sir. He had a case of pneumonia, he claimed that.

Q. Had to walk over here at night?

A. Yes, sir.

Q. Do you know, Mr. Wilson, anything about the amount of property that the railroad company owns down here at the old depot site?

A. No, sir, I do not. I have heard something about it.

Q. Do you know as to the possibility of them securing, in your judgment, suitable depot grounds down there?

A. Yes, sir, I know they can get all they want, so far as that goes, from what I can learn—from what I can hear.

Q. At what cost, if you are able to state?

A. To be reasonable, I could not say exactly in dollars and cents.

Q. Mr. Wilson, it is charged here in the answer filed in this case, that the railroad company has not abandoned any part of the narrow gauge road; what do you know about that?

A. Well, it looks like they have, to me. They don't go over it; there hasn't been anything over it for over a year.

Q. Has the narrow gauge railroad, through its entire length, been broadened and standardized?

A. No, sir.

Q. How much of it hasn't been?

A. I think maybe a little over a mile—fully a mile.

Q. That is what part of the line?

A. The southern end of the line—that goes into town.

Q. Do you know what is the present sentiment of the business men and property owners of the town of Pontotoc proper, with reference to where the depot should be located?

A. Yes, sir, I think I do.

Q. Well, sir, state what that is.

A. About three-fourths of the wealth, and about two-thirds of the property owners, I think.

Q. Are in favor of which site?

A. The old site.

CROSS-EXAMINATION BY MR. RICH.

Q. How long have you lived here, Mr. Wilson?

A. All of my life.

Q. Been in business here ten years?

A. Over, yes, sir—thirteen, I guess.

Q. Your business been growing all of the time?

A. Yes, sir, gradually.

Q. Doing the best business that is being done in Pontotoc today?

A. I think we are.

Q. Doing a better business now than you ever did before?

A. No. I guess we done better last year—maybe; fully as good.

Q. In those two years, then, you did better than you ever did before in your business experience?

A. Yes, sir. We started here thirteen years before, as I stated it to be, but I don't think we did as much this year as we did last year?

Q. The inconvenience you spoke of as the result of the change—inconvenience from the location of the depot—has been something arising out of the cost of drayage?

A. Very little in the last three years.

Q. Very little?

A. Very little more drayage.

Q. You paid the increased price in drayage?

A. Fully three times as much.

Q. How much were you paying before?

A. We paid seven dollars a month last year up to the tim of the change.

Q. How much are you paying now?

A. Between twenty-five and thirty.

Q. You are carrying much more stock than you did before?

A. The same as for the last two or three years.

Q. You are carrying a different stock, now?

A. No, sir.

Q. Don't you carry a grocery stock?

A. We carried that ever since we have been in business.

Q. How many dray loads do you carry per month from the depot—how many per day?

A. Sometimes a dozen—twenty; sometimes it is not any. sometimes it is only two; sometimes we get in two or three car loads of flour. Sometimes it all comes at once.

Q. You have fully ten dray loads per day?

A. Not on an average.

Q. Would you have eight?

A. No, sir; not eight a day.

Q. Six?

A. No, sir; not six. I expect three or four loads, you know. Sometimes we get a piece of a load.

Q. Well, then, you have that for the twenty-six working days of a month?

A. Yes, sir.

Q. That would be one hundred and eight. You pay thirty dollars a month?

A. Some months a little more than others. Some months

twenty-six days; I think, some months, twenty-seven.

Q. Then your drayage costs you twenty-five cents a load for the average?

A. Yes, sir; twenty-five and thirty.

Q. How much did it cost you before?

A. Flour costs now four cents a barrel.

Q. Just answer my question, and then you can explain. How much did you pay before per dray load?

A. I don't know. We never kept any account.

Q. How can you say that you pay more now?

A. Just by the business we do.

Q. You are paying how much?

A. Twenty-five and thirty cents a dray load.

Q. Don't you think that extremely cheap?

A. It is for hauling it, yes, sir.

Q. But I am talking about, isn't that a cheap price?

A. It is a cheap enough price for us. It may be cheap enough, but when we can get it done cheaper—

Q. You don't want anybody to work for you for less than he fairly earns?

A. If he can earn it cheaper, yes, sir. We got the best service in town when we paid seven dollars a month. Wasn't a better man in the county —that was Mr. Cruse.

Q. Aside from that fact, what other inconvenience have you suffered?

A. I haven't suffered as much as others.

Q. I am talking about your case.

A. When you go over there, you are liable to get left, unless you get there for an hour ahead of time.

Q. How many times have you been left?

A. I don't think I have been off more than two.

Q. How many people have you known to get left?

A. A good many get left.

Q. You hear them talk?

A. Yes, sir. They get away half an hour or an hour earlier than they want to.

Q. Has property values been decreased by this, Mr. Wilson?

A. Yes, sir, in one way it has. People don't know what to do. They don't know what the property is worth.

Q. Haven't the real estate people done it—now isn't it

the people of Pontotoc who are uncertain about it?

A. Of course they have done it. That is what is worrying the folks.

Q. You think your property would be decreased forty per cent.?

A. I think it would.

Q. You think property now that would be worth ten thousand dollars would be worth only six thousand dollars?

A. Yes, sir.

Q. Your only basis for that now, however, is that you are now paying only twenty-five to thirty cents a dray load?

A. No, sir; I don't say that.

Q. Is it the fear that somebody else will come into the town of Pontotoc to compete with you?

A. Not that.

Q. What is it, then?

A. If you keep the depot down there, of course the business would move over there.

Q. If that is a better location—business men often do that?

A. If they are forced to.

Q. Don't trade conditions force people to move all of the time?

A. They may think of it.

Q. So, as a matter of fact, your estimate as to the decreasing values as the result of moving this depot here is purely speculative. There is no fact that you can name—

A. That is the way that I would estimate it. Of course people are very often mistaken.

Q. To be sure. But I am trying to get at this basis for this opinion as to the drayage question.

A. I have just told you that I thought the town would gradually build up over yonder way. You know this used to be the business part of town over here, and it has gradually worked this way from the depot being down in the hollow.

Q. Now, you say you attended the meeting in the court house here when the people voted in favor of the new depot site —when those in favor of the new depot were requested to stand on one side of the court house, and those in favor of the old site to stand on the other? When was that?

A. I can't give you the name of the day now.

Q. Wasn't it a cold February day in 1904?

A. It might have been. I remember the house was full of people here.

Q. Don't you remember my being here with Mr. Dewey?

A. The Commissioners were here. Mr. Bradley asked for the vote.

Q. That was after the Railroad Commission had made the order, requiring us to build the depot at the old site, wasn't it?

A. I think it was.

Q. Prior to that time, a meeting was held here at which another result was had, when a vote was taken?

A. Yes, sir. I think they had one meeting at which between twenty and thirty were present.

Q. Wasn't the meeting in June, 1903?

A. I can't name the date.

Q. Wasn't that before any work was done in grading the line?

A. It might have been.

Q. You did not vote at the meeting.?

A. No, sir.

Q. Did you, by your silence, indicate any acquiescence in the proceedings?

A. No, sir.

Q. Didn't have a word to say?

A. No, sir.

Q. After that meeting, didn't the Railroad authorities commence to spend their money in locating the new line and grading it?

A. They may have done it.

Q. You would know if they did?

A. I know they went to work.

Q. Did you take occasion to notify those people you were going to enter into litigation with them and help to sustain and maintain litigation with them, before they spent their money?

A. No, sir; it was not my business to notify them.

Q. You aided in maintaining this prosecution?

A. I have helped a little I guess.

Q. Contributed to the fund to pay lawyers and surveyors and engineers?

A. Yes, sir.

Q. Circulated petitions?

A. Yes, sir. I have helped it on through.

Q. Now, Mr. Wilson, haven't your troubles been due entirely to bad roads?

A. No, sir.

Q. What other things?

A. Bad roads, and being off at a distance, of course.

Q. But chiefly, bad roads?

A. No, sir, it is not. Of course, the roads that way are worse than the ones down here—a good deal.

Q. Then, both roads are bad?

A. All right. Good road down here most of the time.

Q. Wasn't it bad last winter when the other road was in such bad condition?

A. It wasn't so worked up.

Q. If there had been as much travel over it?

A. No, sir.

Q. Did you ever have such weather conditions as you had last winter?

A. I never did know of any.

Q. So as a matter of fact, your drayage troubles were due to bad roads and your bad roads were due to the unprecedented weather?

A. No, sir, they are not a bit worse now than they were in that bad weather. They are the same now as they were last year.

Q. Mr. Jernigan, who is not a citizen of Pontotoc, was one of the men who attended the meeting and who voted.

REDIRECT EXAMINATION BY MR. FLETCHER.

Q. When you say you paid seven dollars a month for drayage before the depot was changed, did you have appreciably more freight then than you have now?

A. I said last year I think about the same amount. The last three or four years our business has been about the same.

MR. W. W. BELL, a witness sworn on behalf of the Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. How long have you been living here, Mr. Bell, in the town of Pontotoc?

A. About forty-four years, with the exception of four.

Q. Mr. Bell, have you never had any interest in this litigation?

A. None whatever.

Q. Contributed in any way to the expense of it?

A. No, sir.

Q. Were you present in the courthouse here sometime before the depot was changed and before this litigation commenced in which there was a vote taken about the changing of the depot or something about the depot?

A. Yes, sir.

Q. I will ask you when the date was, if you remember?

A. Why, I think it was along in June—somewhere along there—I think so. I may be mistaken, I won't be positive.

Q. In June, 1903, wasn't it?

A. I think so—something like that.

Q. Was Colonel Merrill present at that time?

A. Yes, sir.

Q. Do you remember how that vote stood—Mr. Merrill—about?

A. Well, there was about—the best I could gather, about two-thirds in favor of the depot down here.

Q. Two-thirds in favor of the depot down here?

A. Yes, sir.

Q. Were you present at any other time when the vote was taken?

A. Yes, sir.

Q. Will you state what proposition was voted on at that meeting you spoke about?

A. About whether they would put the depot back here by Mr. Pegues, or whether they would put it further back by Hamp Beckham's.

Q. How did that stand?

A. .For the depot by Mr. Pegues. Mr. Merrill said there was no use talking about it, he would not go down in this damn hollow.

Q. Was the question put of whether the depot should be down here in the hollow to which Mr. Merrill's adjective applied, or the question of between the depot we call the new and the old site depots?

A. No, sir, he said there was no use talking about that.

Q. And it was the Beckham and the Pegues that was voted on?

A. Yes, sir.

Q. Do you remember how many voted one way and how many the other?

A. Right out here. I don't believe there was any vote for away out yonder. Most all of them voted for it right out here.

Q. Do you know how many legal voters there are in the town of Pontotoc—about?

A. Why, I think, —as the town now stands?

Q. Yes, sir.

A. No, sir, I could not tell you.

Q. A couple of hundred?

A. I think there is about that—I would not be positive.

Q. Now, were there a great many here, voting at that time in that meeting?

A. No, there weren't fifty men in it—in town men.

Q. Was there anybody else besides town men voting and taking part in it?

A. Yes, sir, there were a great many country people voted. Some of them voted and some didn't.

Q. You would be safe in saying there weren't over fifty voters of the town present?

A. No, sir.

CROSS-EXAMINAITON BY MR. RICH.

Q. You say this meeting was held prior to the commencement of any work on the new site?

A. Yes, sir.

Q. Held here in the court house?

A. Yes, sir.

Q. Who presided at the meeting?

A. Mr. Merrill and Tom Roberson and Franklin were the bosses.

Q. Mr. Franklin was the chairman of the meeting?

A. Yes, sir.

Q. He was mayor then, wasn't he?

A. I believe he was, yes, sir.

Q. How did you say the vote stood—stood in the meeting—as to which, the old site down under the hill and the one where the depot now is?

A. They were about two-thirds for the old site here.

Q. Down under the hill?

A. Yes, sir. That was the first meeting.

Q. About the 24th of June?

A. Yes, sir.

Q. How many meetings have you attended?

A. Two or three.

Q. Did you attend them all?

A. No, sir; I don't believe I did.

Q. You haven't got that meeting confused with the one that was held in February?

A. When you were here?

Q. Yes, sir.

A. No, sir.

Q. Were you here then?

A. Yes, sir.

MR. W. T. FURR, a witness sworn on behalf of the Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. You are the chancery clerk here?

A. Yes, sir.

Q. You are the custodian of the tax books here?

A. Yes, sir.

Q. What is the taxable property of the town of Pontotoc, if you know?

A. As close as I can give it—I can't give you the personals very accurately, but the land roll I can give you. I cannot of special cases.

Q. Can you approximate it?

A. The total netting of it all, I suppose, including the increased corporate limits, would be something like four hundred and fifty thousand dollars—five hundred and fifty-three thousand

dollars—somewhere along there. It stands four hundred and eight thousand, five hundred and fifty-three —not including the addition. I could not give that.

Q. That is the estimate of your values?

A. Yes, sir, and it might run a little higher than that, because I didn't get all the raises. It has increased since I hav been in office.

CROSS-EXAMINATION.

Q. It has increased every year?

A. Yes, sir.

Q. Last year and this year?

A. Yes, sir, considerable increase this year.

Q. How about the town of Pontotoc?

A. Yes, sir, I was speaking of that. The county has increased too.

Q. And what was that increase due to—increased population and number of industries that have come here?

A. Yes, sir, that is one thing, and the increased values of land and personal property.

Q. What has increased the value of land in Pontotoc generally?

A. I could not tell you that, exactly, unless the demand for them.

Q. What has increased the demand for land in Pontotoc town? This is not an agricultural section?

A. One thing would make me pay a little higher price, to keep from paying such high rents. They increased on rents this year.

Q. Everybody raised rents?

A. The man that I rented from, and I understood all the others did, too.

Q. That is generally the case in town here?

A. Yes, sir.

Q. Has anything happened here in the last two years to bring about that condition? Have you been building any factories?

A. Well, there was an oil mill built here.

Q. Where was that built?

A. On the new line of the railroad.

Q. Is that one of the things that have increased your town values?

A. Yes, sir.

Q. There is a brick plant, too?

A. Yes, sir.

Q. Where is that?

A. On the new line.

Q. Are those the only two industries that you have here?

A. Yes, sir.

Q. Are both built on the line of the new railroad?

A. Yes, sir.

Q. Well, you have got the railroad values increased, too, haven't you?

A. The increased valuation of the railroad in this county, the telephones and telegraphs isn't quite as high as it was last year by a few hundred dollars.

Q. That applies only to telephones and telegraphs—the railroad valuation hasn't been increased, has it?

A. I just take it as a whole. The Railroad Commissioners maybe cut it down. And the total footing of the telephones and telegraphs gives us a little less than it was last year.

Q. Now, taking the general situation, don't you know that the increased valuation in your real estate was due entirely to the building of that new railroad?

A. I couldn't say that it was all attributable to the railroad.

Q. But largely?

A. I suppose it had something to do with it.

Q. A good deal to do with it? What else now has happened here? You say the only two large industries that have come here have been located on that line, that is because they can get their stuff handled to long distances from here—isn't that what induces them to go there? They would have come here otherwise?

A. I hardly think the oil mill would have been built unless there was a through line and a standard gauge road. The oil mill is a home industry, made up by the citizens of Pontotoc county. I hardly think they would have built their mill on a narrow gauge road.

Q. Would you attribute the increased value of the property

and the increased rentals to the railroad largely? I am not asking you entirely.

A. I can't say it is wholly.

Q. I am not asking you wholly. I say largely?

A. That would be one thing. You take the increased valuation of the personal property and real estate all over the country, and the demand for property in this town.

Q. When was your assessment roll made up?

A. After the first of February. It is supposed to be what property they had on the first of February.

Q. When was it equalized?

A. At the August meeting.

Q. The new railroad had been built and was in operation for some time?

A. Yes, sir. I said personality. We haven't had a land assessment in the last three years.

Q. But lands have increased?

A. Yes, sir, and the board has raised land and property in this town.

REDIRECT EXAMINATION BY MR. FLETCHER.

Q. Has there been any change in the value of property outside of the town of Pontotoc?

A. Yes, sir, I guess there has.

Q. The ratio of the increase in the county outside of the town of Pontotoc been as great as the rate of increase in the town?

A. I think it has doubled up and down that road.

Q. How about the land up in the eastern part of the county?

A. That is high a plenty.

Q. Has there been any increase in the value in the eastern part of the county?

A. Yes, sir.

Q. Has that been as much in the other part of the county?

A. Yes, sir.

Q. They go to Tupelo, don't they?

A. I think so, yes, sir, with most of their cotton.

Q. And the increase has been the same there as in most of the other parts of the county?

A. I could not speak from personal knowledge. My general information is that all the lands in the county have increased.

Q. What effect would the building of this railroad have upon people who do their business in towns where this railroad does not extend?

A. I don't know that this particular railroad would affect the lands out there.

Q. These two enterprises that you speak of—what capital was it that established the oil mill, was it foreign or local?

A. Local.

Q. How about the brick mill?

A. Local.

Q. That is owned by two gentlemen who live here?

A. Yes, sir.

Q. Both of those enterprises were built before, or after, the railroad was changed from yonder into the other line?

A. Why, I don't believe the road was changed when the stock was made up, but the oil mill was located after they were all satisfied that the line would be built, and they located on that new line. They thought it would be built there. I am not positive whether the line was constructed when the stock was started or not.

Q. You think that our railroad facilities are improved over what they were when the depot was changed?

A. I consider the road worth a good deal more to the county with the broadened gauge.

Q. What effect does it have on the freight rate?

A. We pay cheaper. I understand the coal is cheaper. Someone told me it was about $3.40, I believe now that was the ton rate, and they asked last year about four—something like that; a diffeernce on coal of about fifty cents.

Q. You don't know about the rate on other freight?

A. No, sir. I don't know about that.

Q. The passenger facilities are the same?

A. I suppose so—about the same.

The complainant here closed its Direct.

MR. H. S. JONES, a witness called on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

QUESTION. Mr. Jones, what is your occupation?

ANSWER. Chief Engineer of the Mobile, Jackson & Kansas City Railroad Company.

Q. Are you a civil engineer by profession?

A. Yes, sir.

Q. How long have you been such?

A. About twenty years.

Q. What, if any, experience have you had in the location, construction and operation of railroads?

A. I have been at it nearly all of that twenty years.

Q. What roads have you been connected with?

A. With the Illinois Central, Chicago Rock Island & Pacific, Mobile & Ohio, The Pennsylvania, The Cincinnati, Hamilton & Dayton, and the Mobile, Jackson & Kansas City.

Q. Were you acquainted with the Gulf & Chicago Railroad, running from Middleton, in the State of Tennessee, to Pontotoc, in the State of Mississippi?

A. Yes, sir.

Q. Is that railroad still in operation?

A. Yes, sir.

Q. As part of what railroad?

A. The Gulf & Chicago Railway Company.

Q. Is that still being operated between the states of Tennessee and Mississippi?

A. Yes, sir.

Q. Carrying freight and passengers bteween those two states?

A. Yes, sir.

Q. United States mail?

A. Yes, sir.

Q. Mr. Jones, did you take part in, or control, the original surveys proposed for the Gulf & Chicago Railway Company through the town of Pontotoc?

A. Yes, sir.

Q. When was that work inaugurated?

A. May or June, 1903.

Q. Who was then president of the railroad company and directing the work?

A. F. B. Merrill.

Q. Now, Mr. Jones, tell somewhat in detail what occurred in making those surveys, how you went about it, what conditions —physical, or otherwise—you observed to exist here, and what, if any, effort was made to overcome them by agreement between the railroad people and the people of the town of Pontotoc?

A. Mr. Merrill and myself came to Pontotoc by an agreement with the citizens of the town. We met a great body of them and walked out to the westward part of the town to where we had a preliminary line located, or surveyed. That line was about a mile from the court house. The question of the location of the depot was discussed there on the ground, I believe it was the opinion of everyone present that a depot located on that line would be too far from town, and it was a question as to how close we could get in. We came back to the town of Pontotoc and had a meeting in the courthouse at which meeting Mr. Merrill gave a talk, and told the people that he would have his engineer run several lines and make maps, and we would finally determine on the best line that could be constructed through the town of Pontotoc. Sometime, either the latter part of May or the fore part of June, 1903, I came here with our locating engineer and his party, and had personal charge of the survey work. We were here about a week. Our first survey was to endeavor to use all of the Gulf & Chicago Railroad track. We then commenced to work westward, and located and adopted the line which is now constructed and being operated as a part of the Gulf & Chicago Railway. After that survey was made and reports passed to the president, I believe that he made an appointment with the citizens of Pontotoc for a meeting, and that meeting was held, I think, on the twenty-fourth of June. I did not attend that meeting. Mr. Merrill soon retired from the presidency and work was started shortly afterwards, and I resigned from the position of chief engineer sometime in November, I think it was, the following November, and that is all of my connection with the construction of the road, survey of the road up to the time I was identified with the company again, which was last April.

Q. Now, Mr. Jones, in endeavoring to find the best line through the town of Pontotoc, did you afford to the people of Pontotoc every facility for aiding and assisting you in doing that, and have in view the fact that they were to use this line?

A. In making this location, of course we considered the interests of the people and the interests of the railroad. We considered that the closest we got to the centre of traffic, the better we would serve the people, and the better the people would serve us. Our interests were mutual.

Q. Well, now, Mr. Jones, why was not this railroad built so as to connect it with the narrow gauge line at the then southern terminus of the narrow gauge line?

A. The cost of making that line would have been too excessive for the returns and the cost of operation of it would eventually have to be paid.

Q. What would have been the difference in the constructing of the two lines, the one you have now constructed and are operating, and the one that would have been the line connecting with the narrow gauge property at its southern terminus?

A. About thirty-five thousand dollars.

Q. About thirty-five thousand dollars?

A. Yes, sir.

Q. How much longer, Mr. Jones, would that line have been than the present constructed line?

A. About three-fourths of a mile.

Q. Would that, in any way, have increased the cost of operating the line, the total cost of operating it?

A. Yes, sir.

Q. How?

A. It would have increased the train mileage, of every train that went over the division?

Q. What is the average cost of operating a train per mile?

A. About eighty-seven cents through this section of the country.

Q. Well, wouldn't the cost of operation here with this particular property be a little higher than the average?

A. No, sir, I can't say that it would.

Q. It would be about the average?

A. Yes, about the average.

Q. When equipped and operated through, what number of trains would probably be run over this line per day—the minimum?

A. The minimum will be six.

Q. And what probably will be the maximum?

A. Twenty.

Q. Would the cost to the traveling public be increased in any way by an increased length of line?

A. Only the local travel.

Q. Well, would this be a through passenger line or a local line principally?

A. I would consider this, so far as I am familiar with the scheme, a local line.

Q. Mr. Jones, when this property is finished, ready for operation from Middleton, Tennessee, to Mobile, or from Mobile to Jackson, Tennessee, will it or not be in competition with other through train-lines from southern ports to the northwest and west?

A. Yes, sir, through connections. As an instance, the line of communication with the Frisco system, or the Illinois system, would be in competition with the Mobile & Ohio, and the Louisville & Nashville Railroad Company and the Southern road.

Q. Well, for business out of Mobile and into Mobile, it would be in competition with the Louisville & Nashville Railroad Company, the Southern, and the Mobile & Ohio, now, would it not?

A. Yes, sir; it would not for what you might call through business. What I term "through business" would be business from one district to another.

Q. Well, would it be in competition at all?

A. Yes, sir.

Q. Considered from an engineering standpoint and the standpoint of an operating railroad official, is the lengthening and shortening of a line of that character three-fourths of a mile, or one mile, a very important consideration?

A. It depends largely on the connections. Our aim is to make as short a line as possible, but at the same time we do not sacrifice centers of traffic for distance.

Q. Well, I mean having that in view, having your scheme —general scheme—in view, say of building a railroad from Middleton, Tennessee, or Jackson, Tennessee, to Mobile, would shortening or lengthening it a mile at any point be a very material consideration?

A. O, it would add very materially to the cost of operation and maintenance.

Q. And considerably to the cost of original construction,

would it not?

A. This particular point would, yes, sir.

Q. Would it or not render the line less able to compete successfully with other lines?

A. Yes, sir, it would have more interest debt to pay, more taxes, and more operating expenses to pay.

Q. And be less able to make time.

A. Yes, sir.

Q. Mr. Jones, what would it cost the Mobile, Jackson & Kansas City Railroad Company, or its lessee, the Gulf & Chicago Railway Company to throw away the work already done, and to build the line through the old depot site in the town of Pontotoc?

A. You mean today?

Q. Yes, sir, or say the 3d day of August, 1904?

A. The 3d of August, 1904?

Q. That is after the completion of the depot building?

A. Well, if that was after the completion of the depot building, the final estimate of grading, bridging, clearing, track laying, and right of way was nearly forty-seven thousand dollars between the point where we had made a survey to detour in order to go into the old depot site. Add to this forty-seven thousand dollars, three thousand dollars for side tracks, twenty-six hundred dollars for the depot, and seventeen hundred and fifty dollars for the section houses—fifty-four thousand dollars.

Q. That is the cost of the work already done?

A. Yes. Now that is up to the time you asked me.

Q. The completion of the depot?

A. I assume that the depot was built at that time—I don't know.

MR. FLETCHER: That is the time the suit was instituted and a depot erected.

MR. RICH: Well, now, add to that loss the cost of operating the new line, what is that?

A. The new line to the end of the old narrow gauge, including an estimate for the cost of a right of way would be fifty-five—something over fifty-five thousand dollars—I think it is fifty-three thousand dollars. To revise the grades, to obtain standard depot grounds and grades—standard depot grounds—renew the bridges, lay seventy pound rail on a narrow gauge road,

all complete, will be thirty thousand dollars more.

Q. That would be about eighty thousand dollars?

A. About eighty thousand dollars.

Q. Now, Mr. Jones, is it practical to get standard depot grounds at the old narrow gauge site?

A. Why, yes, it is practical—hold on—I do not want to answer in that way—it is not practical?

Q. Well, why is it not practical?

A. Because it would cost too much money in comparison with the other site.

Q. Now, why would it cost too much money—tell the conditions.

A. As you go nearer to the center of town the property is higher.

Q. How much ground would you have to have for standard depot pusposes?

A. Including right of way?

Q. Yes, sir.

A. It requires about eleven acres.

Q. How long and how broad is that?

A. Two thousand feet long and two hundred and fifty wide.

Q. Would you have to purchase or condemn any quantity of valuable private property at the old narrow gauge depot site to accomplish that?

A. Yes, sir.

Q. Just describe?

A. There is a house in the rear of the old depot site; dwelling houses with a value of about twelve hundred dollars. A part of the old round-bale compress would have to be taken; I value that at eight hundred dollars; then that electric light and planing mill—I guess it is abandoned now—well, when I priced that some time ago, the man who owned it and was running it said that he wanted five thousand dollars for it; I told him that I thought it wasn't worth over forty-five hundred dollars, and that I concluded at the time we made the estimate as the price of that property. Then the two houses on the west side of the track I valued at one thousand dollars apiece. Those are the dwelling houses and private property—that amount perhaps the properties would cost—the highest price. The

balance of it is just vacant lots, that would perhaps cost us, if you were to condemn, two hundred dollars an acre.

Q. Now, would you have to change the physical condition at that point very materially?

A. Yes, sir.

Q. Well, now, in what way?

A. The hollow on the west side of the track would have to be raised, along on the west side of the track would have to be filled. The whole track at the depot site would have to be raised. There is one water way that would have to be crossed by a bridge, extending the entire grade of the depot grounds, which would be about one hundred feet wide, raise the general scheme of the grades there, or rearrange the general scheme of the grades.

Q. Would that be done at a large or small expense?

A. A heavy expense.

Q. You have heard the testimony of Mr. Finley this morning?

A. Yes, sir.

Q. Are you familiar with the lines suggested by him or surveyed by him?

A. Yes, sir, in a way familiar with it?

Q. Is that at all practical?

A. No, sir.

Q. As a way out of this difficulty?

A. No, indeed.

Q. Well, now, Mr. Jones, just briefly tell what renders the line surveyed by Mr. Finley impractical, if not impossible?

A. Excessive curvature and excessive excavation and embankment, and excessive tresseling, and an increased length, more than of any other scheme that has been brought up yet.

Q. More than the present operative lines?

A. Oh, yes, and more than the line—the located line that we have had constructed—the base line, that could be gotten in there to go by the old depot site.

Q. What do you mean by excessive curvature, Mr. Jones?

A. What is that?

Q. Mr. Finley said this morning that that would be a curvature of about four degrees, didn't he?

A. No, he did not. He said that the maximum curve would be four degrees.

Q. Well, now, what does that mean in the operation of a railroad—in the operation of trains—what is the effect of it?

A. It might mean much and it might mean little. You might have a succession of four degree curves to a mile. You would have an excessive curvature. You might have only one four-degree curve, a short one—say, a thousand feet long in a mile, which would not be an excessive curvature, and still you are talking about four-degree curves.

Q. Well, would this be excessive in the sense you use the term?

A. Yes, sir, because there are so many of them. There are fifty-seven per cent. of that line that Mr. Finley ran a trial line over, which we made a careful location—over the same country. Fifty-seven per cent. of that line is curvature, leaving only forty-three per cent. tangent.

Q. What would that be in the operation of trains—the adverse effect, if any?

A. Well, the curvature increases your maintenance charge for maintaining the engines and rolling stock, and it is considered that every degree of curvature is worth or costs forty-eight cents per mile. An engineer, in locating a line—

Q. It costs forty-eight cents per degree for what time?

A. For one daily round trip train per year. Let me put that in a different shape. One degree of curvature costs forty-eight cents per year, per round trip daily train, operating expenses. I cannot give you the exact number of degree of curvature there is in that line.

Q. Well, you say about fifty-seven in the whole?

A. Fifty-seven per cent. of the line is curvature.

Q. But what number of degrees?

A. I can't give you the exact number of degrees of curvature there is in that line.

Q. Would it be much higher than the present operated line or any other line that has been surveyed here?

A. Very much higher.

Q. Mr. Jones, much has been said about the bad roads to the new depot site, are you familiar with the character of the road from the town to the old depot, and from the town to the new depot site?

A. Yes, sir.

Q. Well, considering the topograiphcal surroundings, which of the two roads could be most easily put in good condition by proper engineering?

A. Well, there are two roads to the old site.

Q. I am talking now about the road that has been adopted as the road to the new depot. The one that has been worked to some extent by the city.

A. I think the road leading to the old site, which stops at the court house could be put in shape more economically than the other one.

Q. Is that because of the general character of the ground, or just the length of the road?

A. Both.

Q. Well, what about the road to the new depot? Could that be put in good condition?

A. Oh, yes, sir.

Q. Could it be graded in such a way as to make it an easier haul than the old road?

A. Yes, sir.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Now, Mr. Jones, you were the Chief Engineer of the Mobile, Jackson & Kansas City Railroad Company for some two years before this Pontotoc controversy came up?

A. No, not two years.

Q. How long had you been Chief Engineer at that time?

A. I commenced in May, 1901.

Q. In May, 1901? Now—

A. That was two years, yes, sir.

Q. You were an officer of the corporation, were you, Mr. Jones?

A. Appointed by the President, yes, sir.

Q. You were in the employ of the Mobile, Jackson & Kansas City Railroad Company?

A. Yes, sir.

Q. Not in the employ of the Gulf & Chicago Railway?

A. Not at that time.

Q. Now, the Gulf & Chicago Railway extended from Middleton to Decatur; is that the fact?

A. Yes, sir.

Q. And the Mobile, Jackson & Kansas City have leased that property?

A. Yes, sir.

Q. And the Mobile, Jackson & Kansas City itself constructed the railroad from Decatur to Mobile?

A. No, sir.

Q. I did not mean as the construction company, but as proprietors of the railroad?

A. Yes, sir.

Q. The whole line was constructed by a construction company, was it not?

A. Yes, sir.

Q. That was the Gulf City Construction Company?

A. Yes, sir.

Q. Are you familiar with the contract that the Gulf City Construction Company had with the Mobile, Jackson & Kansas City?

A. No, sir.

Q. You don't know what the contract price per mile was?

A. Bonds and stocks.

Q. To what extent?

A. Twenty thousand dollars each.

Q. I understand, then, Mr. Jones, that this contract between the Construction Company and railroad company contemplated the payment of a round sum of twenty thousand dollars in stocks and twenty thousand dollars in bonds per mile, regardless of the cost of any particular mile on that line?

A. Yes, sir.

Q. Now, then, you say this line here would be three-fourths of a mile longer constructed by the old route from the way it was finally located?

A. Yes, sir.

Q. It would not make any difference, then, to the railroad company, as to the peculiar difficulties which existed here, so far as the cost to the railroad company is concerned?

A. No, sir.

Q. Except the three-fourths of a mile?

A. Additional bonds.

Q. Additional mileage. Now, at the time when you were

locating these lines, were you taking into consideration the interests of the construction company at all, or just the railroad?

A. Just the railroad.

Q. So that, in locating the line, where you did as distinguished from the line down by the old depot, you simply considered the cost of maintaining rather than the cost of operation?

A. If you will let me take that other answer back, I will have to answer that the interests of both the construction company and the railroad company, too, were considered.

Q. Very well, just make any modifications that you like, of course. Now, I understand, Mr. Jones, that when you first seriously considered this proposition, was the time you came here with Colonel Merrill, and he met certain citizens west of town here?

A. Yes, sir.

Q. And some of them were out there looking to a location west of where it now is?

A. Yes, sir.

Q. That is what we call here, the Hamp Beckham place?

A. Yes, sir. I know it by that place.

Q. I believe you say you decided—you and Colonel Merrill decided—that that was too far from town?

A. Yes, sir.

Q. Was the fact that you selected the route that you finally selected by that question of getting near to town, or how?

A. Getting nearer to town.

Q. Which was the better route?

A. The route by the Hamp Beckham place was the shortest and the most economical to build.

Q. Now, the route which you selected was—how many lines did you run here, Mr. Jones?

A. Four.

Q. Four lines?

A. Yes, sir.

Q. Was any one of these lines selected from the southern terminus of the narrow gauge?

A. One.

Q. And that one was by the Hamp Beckham place?

A. If you include that it makes five.

Q. Now, the route which you selected finally was the best route?

A. Yes, sir.

Q. Now, what determined your decision, and your judgment in selecting that particular route over the others?

A. We considered the interests of the people, and the interests of the railroad, and the interests of the construction company—the three combined. It would serve all three interests better, perhaps, than any other line.

Q. Were you an officer of the construction company, Mr. Jones?

A. No, sir, but I represented them.

Q. Now, the route you say the railroad could have been constructed by the old depot, provided no work had been done over there on the new route, at an additional cost of about thirty-five thousand dollars?

A. Yes, sir.

Q. Now, if you had spent that thirty-five thousand dollars, Mr. Jones, you could have put that route in as good condition for traffic, except as to increased mileage, as any other?

A. Yes, sir; we would have spent thirty-five thousand dollars.

Q. That expense would not have called for any radical change at this place?

A. It contemplated radical changes in the grades, but that would have been taken care of in the thirty-five thousand dollars additional expenditure.

Q. That would have eliminated these grades?

A. Yes, sir.

Q. Then if you had spent the thirty-five thousand dollars, there would have been no increased burden on traffic, except the increased mileage?

A. The burden on traffic would have been in the increased cost of operation.

Q. Due entirely to the increased mileage?

A. Yes, sir.

Q. So that, by expending that thirty-five thousand dollars, you could not have distributed your scheme of grades which prevailed throughout the line?

A. No, sir.

Q. Now, the—about this mileage business, Mr. Jones,—the increased cost to the railroad company, would have been

just three-fourths of the cost of building a mile of road?

A. Yes, sir.

Q. Regardless of any special difficulties in the way here?

A. Yes, sir.

Q. You said on your direct examination that it was always thought by the railroad company that to get as near as possible to the center of traffic, and that the increased mileage was a subordinate consideration as compared with getting nearer to the centers or traffics?

A. Yes, sir, if by getting nearer to the centers of traffic you overcome the increased cost of the increased distance. If your revenues will pay you an interest on the increased investment, you are going to get to the center of traffic.

Q. Both factors being considered.

A. Yes, sir.

Q. Now, isn't it a fact that the construction of this particular line, as well as other lines—but say this particular line—isn't it a fact that you have in several instances besides at Pontotoc, diverted from a more direct line for the purpose of getting nearer to the center of traffic?

A. We have at Newton.

Q. Is it not true at Louisville?

A. Yes, sir, it is true at Louisville.

Q. Now could you state approximately how much at Louisville? For instance, you have diverted from the most economical route for the purpose of getting closer to the town of Louisville?

A. Four miles.

Q. You have come four miles further out of your way for getting closer there?

A. Yes, sir.

Q. What is the average cost of construction—average mile of a railroad?

A. It is about eighteen thousand dollars, I think.

Q. So you have spent seventy-two thousand dollars more at Louisville for the purpose of affording those people railroad facilities?

A. By no means.

Q. You say you went four miles out of the route?

A. That is we diverted four miles, but that didn't increase

the distance four miles.

Q. How much did that increase the distance?

A. We commenced to deflect to get to Louisville several miles south.

Q. If you hadn't made that deflection, and gone on an approximately straight line, you can't say how much less your mileage would have been—if you hadn't made that deflection?

A. I don't think it would have been half a mile.

Q. How about the matter at Newton?

A. We did the same there that we did at Louisville. The most direct line was through Blake, and we commenced to detour about ten miles from Washington.

Q. Do you know how much the total mileage was increased by that division at Newton?

A. No, but I don't think it would be any more than at Louisivlle.

Q. How about Maiton and Matthewton?

A. There was none there—we shortened the line.

Q. You make both of these towns on the railroad?

A. Yes, sir.

Q. They are approximately east and west?

A. No, sir. The station map shows them that way.

Q. Maiton is what direction from Matthewton?

A. Northeast.

Q. The general direction of your road is north and south?

A. Yes, sir.

Q. How much have you detoured there from a direct line to make both of these points?

A. We have shortened the distance there, because to get around obstacles that would go—that would appear north of Matthewton, we increased our line from the Maiton line some eleven hundred feet. By going by the way of Matthewton and Maiton, we shortened the original preliminary survey about eleven hundred feet.

Q. Did that preliminary survey make both of these towns?

A. No, sir.

Q. Just one of them?

A. Yes, sir.

Q. How far is Maiton from Matthewton?

A. Two and a half miles.

Q. Now, isn't it a fact, Mr. Jones, that you made Maiton and Matthewton both by reason of certain contracts with those towns?

A. I believe we did.

Q. And not from any engineering standpoint?

A. In Matthewton, that was done before I resigned from the office—wasn't any contract to go by way of either Matthewton or Maiton.

Q. That is a matter that you did not know of your own personal knowledge?

A. No, sir.

Q. Now, at the time you came here to Pontotoc, and had this interview with those citizens out there, they did not have any meeting that day that you know of, after the meeting in town?

A. I think they did. I think they came right up to the court house.

Q. Were you present at the meeting?

A. I won't say positively that I was, but I think I was.

Q. That was before the line had been located?

A. Yes, sir.

Q. Now, were you present at any meeting after that time?

A. No, sir.

Q. Isn't it a fact, Mr. Jones, that you didn't attend any of these meetings?

A. I attended one.

Q. I mean at the court house?

A. Not unless I attended the first one, and I don't know whether I attended the first one or not.

Q. You have no recollection of any vote being taken or any details of the meeting at the court house?

A. Yes, sir, I did attend one when the Railroad Commission was here.

Q. That was in January, February or December—somewhere along there?

A. Yes, sir.

Q. That vote was overwhelming in favor of the old site, was it not?

A. Yes, sir.

Q. Now, Mr. Jones, you say in locating this line, you took into consideration the interests of the town of Pontotoc?

A. Yes, sir.

Q. And also, of course, the interests of the company for which you were engaged?

A. Yes, sir.

Q. The interests of the railroad required you to get out there because it would save thirty-five thousand dollars to the railroad company and to the construction company?

A. Yes, sir.

Q. And also prevent this burden on future travel?

A. Yes, sir.

Q. Now, Mr. Jones, if you had been informed of the fact, or if you had known as a fact, that the effect of putting the depot or the railroad over there where it was put would be to depreciate the value of property here to the extent of two hundred and fifty thousand dollars, what would you have to say about the interests of the railroad, or how would that have influenced you in locating the line?

A. Well, if that had been a fact, and proven, I would have considered that the interests of the people town were being pretty badly sacrificed.

Q. Wouldn't that have influenced you in locating this line, and caused you to make a change in it?

A. Yes, sir.

Q. You think it would? Now, you were the sole and final arbiter of the question of locating lines, were you, Mr. Jones?

A. Yes, sir.

Q. I believe that you said on your direct examination that you supervised this work personally?

A. Yes, sir.

Q. The line which you surveyed south from the old depot site, how long would that line be from the southern terminus of the narrow gauge road, to a point along the most practical route that you found, to a point on the line as at present constructed?

A. Ninety-seven hundred feet.

Q. I believe you say that would cost, say, forty-seven thousand dollars?

A. Including the right of way, my recollection is it fifty-three or fifty-five thousand dollars.

Q. Now, this estimated additional cost of thirty-five thousand dollars to run the line by the old depot, included the additional cost of acquiring the depot site down there, did it?

A. Yes, sir.

Q. And the cost of acquiring the property that you would have to condemn there and remove?

A. Yes, sir.

Q. Now, when you say, Mr. Jones, that you thought that that line out yonder at the Hamp Beckham place was too far from town, explain what you mean by that?

A. Well, it would be more inaccessible to the patrons of the road than a line closer in.

Q. The closer the line is into the town the better it is to the people.

A. And the railroad, too.

Q. In what way to the railroad?

A. Well, the prosperity of the railroad depends upon the prosperity and convenience of the people.

Q. Now, you recognize, of course, the fact that so far as this town over here is concerned, it would be better for them to have the depot down where it was originally than where you put it?

A. Yes, sir.

Q. If they were alone to be considered?

A. Yes, sir.

Q. Now, in that meeting of the citizens over yonder at that place, near the Hamp Beckham place, didn't Colonel Merrill state to these people that it would be out of the question for him to run this line down by the old depot?

A. I don't know whether he said that or not.

Q. Well, isn't it a fact, Mr. Jones, that Colonel Merrill and yourself, or the officials of the road, had practically decided that they would not build out there before any survey was ever made?

A. Some of them had, but I never had.

Q. No steps in it?

Q. Now, were you at any time directed by any officers or officials of the road to find a route from the old depot site southward, if possible?

A. Not especially south from the depot site. As I recol-

lect, I considered that I was doing my duty to find one south of the depot site, and use that old narrow gauge road if I could possibly do so.

Q. Wasn't that—

A. (continued) In view of the best interests of the two parties who were interested in it. I believe I said in my direct examination that Mr. Merrill had told some of the citizens here that he would send his engineers to develop the country and see what the line was. I don't recollect that Mr. Merrill or anybody told me what particular line to run, and I came here with you, may say, a free hand to find the best line in and out of Pontotoc.

Q. Well, then, Mr. Jones, isn't it a fact that at the time that you surveyed the line down southward from the old depot, that you began that survey with a pretty fixed determination not to adopt it as the line of the road?

A. No, sir.

Q. This is not the case?

A. No, sir.

Q. Now, your opinion was then that the increased cost to the railroad and construction company would compensate —would be much the more important factor in the matter than the disadvantage of the town of Pontotoc by having put it out yonder where you put it?

A. No. I can't say—if I understand your question, I can't say that I did.

Q. I may make it clear. As I understand you to say, there were two things that you considered—the interests of the town, the railroad company and the construction company? Now, you say it would have been to the interest of the town if they only were considered, to put it down at the depot, and it would have been to the interest of the railroad, if they had only been considered, to put it where you put it?

A. No, sir, at the Hamp Beckham place.

Q. It would have been to their interests simply for the economical construction of the line for the present purpose; but in your statement awhile ago that the interests of the road and town were interlocked, wouldn't it have been best for the interetss of the road to have put it as close to the town as possible?

A. Yes, sir. It was to the interest of the railroad to have

put it up behind the stores, if you could have gotten it there.

Q. Now, that route that you surveyed down south from the old depot site, which you say you could have constructed at a cost of fifty odd thousand dollars, you don't regard that as being an impossible route?

A. No, sir.

Q. Now, when you say it is an impracticable route, you simply speak comparatively, comparing it with the route that was finally adopted?

A. Yes, and the expense and the results, too.

Q. In your experience as a railroad man, you have built railroads over routes much more difficult than that, have you not?

A. Not much more. Some more difficult.

Q. It wouldn't have meant the tunneling of any mountain?

A. No, sir.

Q. Nor the bridging of any large streams?

A. No, sir.

Q. Nothing of that kind?

A. No, sir.

Q. Now, about this mileage business—the increase, leaving out the question of the original cost of thirty-five thousand dollars, the only burden there would be on travel or traffic would be the increased mileage of the road?

A. Yes, sir.

Q. Make it three-fourths of a mile longer?

A. Yes, sir.

Q. That would, therefore, require passengers especially to pay for three-fourths of a mile more?

A. Yes, sir.

Q. And the shippers of freight east—would be a matter to be considered in fixing a rate for them?

A. Yes, sir.

Q. And wouldn't it be a burden on through travel at all?

A. No, sir.

Q. Now, it would be—so far as the time lost in operating trains, it would still mean the time of running three-fourths of a mile further?

A. That is all.

Q. Of course, the company would collect, so far as the company is concerned, and additional amount for this three-

fourths of a mile, that they haul passengers and local freight?

A. Yes, sir.

Q. Would that compensate them for the increased train expense that they would be out to?

A. I don't think it would. That is a mere matter of speculation as to how much they would get.

Q. It would depend, of course, on the amount of business that they would have?

A. Yes, sir.

Q. Now, in considering this cost of acquiring a depot site down here, those figures that you give on those estimates were they based upon the idea of putting the depot back on the site where it was?

A. Yes, sir.

Q. They were not based upon any other possible depot site that might be selected?

A. No, sir.

Q. Now, could a depot site be selected just a short distance south from where that was at, and more economical?

A. No, sir.

Q. Cost just as much?

A. A short distance south?

Q. Yes, sir.

A. Yes, sir.

Q. Well, say a couple of hundred yards south?

A. I think it would have cost more to have put it a couple of hundred yards south.

Q. Would it involve the sacrifice of property as valuable as that you mentioned?

A. Yes, sir, because I think that would all come in that two thousand feet.

Q. Have you canvassed the possibility of locating a depot elsewhere within the town of Pontotoc along that line than the old depot site?

A. No, sir, because there are no streets and no other ways for the people to get into the depot except at that site or within say, one hundred and fifty feet from that site—the old site.

Q. The house that you speak of there as being worth twelve hundred dollars, that is what is called the Captain Stanford house?

A. Yes, sir.

Q. And the compress—I believed you called it a compress it is only a round-bale gin? That is eight hundred dollars?

A. Yes, sir.

A. Yes, sir. That is only a part of that plant.

Q. Now, if this planing mill and electric light arrangment has been abandoned, if that machinery has all been removed, you would have to revise your figures at five thousand dollars?

A. I put that at forty-five hundred dollars.

Q. That would make it much less—how much less do you suppose?

A. Well, I would say three thousand dollars.

Q. Three thousand dollars less?

A. Yes, I think with the business out of there and the machinery out of there, the place isn't worth over fifteen hundred.

Q. Instead of forty-five hundred?

A. Yes, sir.

Q. And the houses that you estimated at a thousand dollars apiece, they were negro cabins, weren't they, Mr. Jones?

A. No, sir, I don't think they were. One of them is very nicely painted on the right of the road as you go towards the depot, and the other is a story and a half house south of the road. I don't know whether they are occupied by negroes by any means—they are not negro cabins.

Q. One is where?

A. This road that goes down to the depot site, there is a house that is painted a pea green to the right of the road leading over towards the oil mill, and then down on the left of that—down quite a distance—there is another house that is not painted—a story and a half house.

Q. Now, that line that you were asked about on cross examination there—that line that Mr. Finley testified about—did you ever run that line accurately, Mr. Jones?

A. I had a line started from there, but it was so impractical after we got over it that we abandoned it and started a line further south.

Q. Is that when you were first contemplating the location?

A. That was just two months ago—about three months ago—the third day of August a report came to me.

Q. August of this year?

A. Yes, sir.

Q. So you think, Mr. Jones, that our engineering corps and yourself could find a much better line than that, if you were compelled to build south from the old depot?

A. A better line from what?

Q. The Finley line.

A. Yes, sir, we have a better line than that.

Q. Have you got that line on a blue print?

A. Yes, sir, but it is my office file, and I could not leave it here as a matter of record.

Q. Well, let me see it for my own information.

A. I will show you where Finley started to survey to.

Q. The line which you have lately surveyed—used in connecting the old depot and the new line—was that about the same line that you ran before the line was finally located in the summer of 1903?

A. This line?

Q. Yes, sir.

A. No, sir, here is the line.

Q. As the matter now stands, then, this last line that you ran would be more economical than this original line that you ran, in view of the fact that you had this road constructed?

A. Yes, sir, eleven thousand dollars cheaper.

Q. Cheaper to run it this way?

A. Yes, sir, as it is now.

Q. Taking the situation as it now stands, Mr. Jones, would you say that it was impossible to connect the depot as it stands —the old depot—with your present line?

A. Not impossible, no, sir, if we had the money.

Q. With the expenditure of fifty-three thousand dollars that you speak of, it could then be as good a road as the road that you have over there, except for the increase in mileage?

A. Well, this last line we ran—the line we ran last August —makes that detour seven hundred feet longer—makes it forty-eight hundred increased feet longer, instead of forty-one hundred feet.

Q. Constructing that line along that route would cost you approximately forty-two thousand dollars?

A. Yes, sir.

Q. As distinguished from fifty-three thousand dollars to have built it along the line you first run?

A. Yes, sir.

Q. Now, speakng about the question of curves, Mr. Jones, is the five degree curve an unusual curve for a railroad?

A. No, sir.

Q. A railroad is built according to the standard requirement with curves as large as a five-degree curve, is it not?

A. Yes, sir.

Q. In considering the location of a railroad, is it a serious objection to any particular location that it would involve a curve as great as five degrees?

A. Well, all curvature is objectionable; but the five degrees curve is no more objectionable than a four-degree curve, if you do not have any more angle to turn.

Q. Now, I believe that I understood you to say, in answer to Mr. Rich's last question, that the road to the new depot could be put in good repair at much less expense than the road to the old depot?

A. I didn't say much less, but I believe it could be repaired at less expense, to be sure. I am not figuring on this road down by the hotel, because I think that would cost considerable money, but I am talking about this road over here.

MR. RICH: When I said the old road, I meant the road by the hotel.

A. It would cost more to put that road in condition than it would over here to the old depot.

MR. FLETCHER: The main road, as I understand it, leading to the depot, doesn't go by the hotel?

A. There are two roads that seem to be the main traveled streets, going by the court house.

Q. The one by the Methodist church?

A. Yes, sir, the road going by the hotel is very steep and very abrupt.

Q. Now, Mr. Jones, in locating this railroad, the line where you did locate it, you didn't take into consideration any contract duties devolving on this railroad company, did you?

A. With the Railroad Commission?

Q. With the Railroad Commission, yes, sir.

A. No, sir.

Q. You didn't take into consideration the fact that they were under obligation, as it is contended, to broaden and stand-

ardize the entire line, throughout its length?

Q. The question as to the legal right of the railroad company to abandon the line where it is established—that wasn't called to your attention by anybody?

A. No, sir.

Q. You didn't take that into consideration? Now, I want to ask you a question that was asked you on your direct examination at Mobile. You remember being examined at Mobile?

A. Yes, sir.

Q. I will read it just as it was given there: "Were you ever instructed by the railroad company, for which you were to get a line south from the old depot site, if such practicable line could be found?"

A. No, sir. I answered that in your cross examination here before?

Q. Now, Mr. Jones, the Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railroad Company have abandoned part of the narrow gauge line now, have they?

A. Well, they are not operating the sixty-seven hundred feet of it.

Q. What sixty-seven hundred feet is that?

A. That is from up about Mr. Cruse's station away down to the end of the narrow gauge road.

Q. That is the extreme sixty-seven hundred feet of that line?

A. Yes, sir.

Q. The extreme southern part of the line?

A. Yes, sir.

Q. Has that ever been broadened?

A. No, sir.

Q. Or standardized?

A. No, sir.

Q. Now, this thirty-five thousand dollars that you speak of, the original cost of construction by the old depot out there, included the cost of putting the narrow gauge line in good repair—good condition?

A. Yes, sir.

Q. The figures that you gave to Mr. Rich on your direct examination as the expense of the road, would it now abandon their line as constructed, that included the cost of the depot, did it?

A. Yes, sir.

Q. The twenty-six hundred and fifty dollars—didn't you give that as twenty-six hundred and fifty?

A. I think the depot cost twenty-six hundred and fifty. It is the cost of the one we are using now.

Q. Now, there are some pretty serious cuts on your line there between the point of division of the old road and the new road, and the point where the road would come together again if constructed south, are there not, Mr. Jones?

A. I don't understand that question.

Q. No? Take the line of the road as at present constructed and the point at Cruses, where the two roads branch off, down to the point where your possible line from the old depot would come back to this new line?

A. Yes, sir.

Q. Along that line, aren't there some cuts and bridges?

A. Yes, sir.

Q. What is the extreme depth of the largest cut?

A. I think about twelve or fifteen feet.

Q. What would be the largest cut you would have to have if you were to build it south from the old depot on the new line?

A. My recollection is that it is twenty feet—twenty-four feet odd.

Q. Twenty-four foot cut?

Q. Twenty or twenty-four .

Q. Twenty or twenty-four foot cut—isn't that unusual for a cut on a railroad?

A. No, sir. Let me correct that. I want to say it is an unusual cut. A twenty-four foot cut is an unusual cut on the Mobile, Jackson & Kansas City Railroad, or on the Gulf & Chicago Railroad.

Q. Not an unusual cut, though, on many of the roads that are built in the country?

A. Well, they are not through the mountainous country, no.

Q. Now, isn't it a fact, Mr. Jones, that the construction of the road by the old depot would be materially more expensive—I don't mean now, throwing away what you have, but if it was an original proposition, wouldn't materially be more expensive that the road you did adopt, except for the increased mileage?

A. Would it be more expensive?

Q. Materially more expensive?

A. Yes, sir.

Q. Well, there would be a great deal more excavation that way than it would require the way you did construct it?

A. Yes, sir.

Q. Now, you say the average cost of building a line of railroad is eighteen thousand dollars?

A. I think it is going to come pretty close to it.

Q. Suppose you were to add the new depot?

A. In fifteen thousand dollars. I want to correct that.

Q. If you were to take the new depot now as a starting point, and construct a mile just south along the line where the road runs, what would be approximately the cost of that mile of construction?

A. I can give you the average cost—the two miles and a half from where the Gulf & Chicago diverges up north, down to where we would come in if we should detour by the old depot, would cost forty-seven thousand dollars.

Q. Forty-seven thousand dollars?

A. That is our estimate. That is what has been paid for this two and a half miles. That is a guess. A little arithmetic and you can get the one mile. It is nearly fifteen thousand dollars for that work. That includes the track and just as you see it there right now, exclusive of depots and section houses.

Q. That would be the proper basis of comparison, taking the cost of that, with the cost of constructing this projected line from the old depot back to this line, wouldn't it?

A. Yes, sir, it would compare with that.

REBUTTAL EXAMINATION BY MR. RICH.

Q. Now, Mr. Jones, you were asked about deflections from the line at Louisville, Newton, Matthewton and Maiton. At Newton and at Louisville, was the company compensated in any way by the grants of a right of way?

A. Yes, sir.

Q. And at Matthewston and at Maiton, wasn't the same course pursued?

A. Well, I don't know. I think it was, but that wasn't to my personal knowledge—I couldn't say that it was.

Q. That is your information, is it?

A. Yes, sir.

Q. You were asked if, in finally locating and adopting the line upon which you extended the railroad, you considered the interets of the railroad company, the construction company and the interests of the people at Pontotoc. You say that the line pass the old depot, considering the interests of the people of Pontotoc exclusively, would have been the best line? The line you adopted—or rather, the line known as the Hamp Beckham place, considering the interest of the railroad company would have been the best line?

A. And considering the interest of the construction company, would have been the best line?

Q. The construction company and the railroad company were practically one, were they not?

A. That is the reason I changed my answer. I included those three parties and the interest of the construction company —and the Hamp Beckham line would have been the best; and the railroad company, for the purpose of accommodating the people, it would have been best to get in closer.

Q. But as a matter of fact, the interests of the railroad company and the interests of the construction company were identical?

A. Yes, sir.

Q. Did you, in adopting the line that you adopted, endeavor to subserve both of those interests?

A. Yes, sir.

Q. How far west of the adopted line is what is known as the Hamp Beckham place?

A. About a quarter of a mile.

Q. That would have put the depot about a mile and a quarter from town?

A. No, a mile from the court house.

Q. A mile from the court house?

A. Yes, sir.

Q. You were asked if you considered at all the fact that property values in the town of Pontoc would have been depreciated two hundred and fifty thousand dollars. Had you, then, or have you now, any reliable evidence that such is the case?

A. No, sir.

Q. What is your opinion about it? You have been coming to Pontotoc and looking around Pontotoc and making investiga

tions here for the past two or three years—have property values been increased or decreased, or what has been the effect upon them, if any, by the railroad controversy out here?

A. Well, I think the controversy hasn't had any very beneficial effect when you come to consider the growth of other towns along the line—how they have grown. This controversy must have in some way had its effect on the town.

Q. Have property values been depreciated here?

A. I don't think they have been depreciated. They certainly haven't advanced like they have at Newton, Louisville and Philadelphia—those places.

Q. Is that or not due to the controversy or any action on the part of the railroad company?

A. I would think it was due to the controversy.

REBUTTAL EXAMINATION.

Q. Mr. Jones, what would be the difference in the cost of constructing an entirely new line from the station away down to the old depot along the narrow gauge railroad, over the cost of putting the present narrow gauge line into good condition—standard condition?

A. I couldn't give you anything on that. I would have to guess at it, and my guess would be about as good as yours. These other figures are what I have given you from actual measurements—most of them.

Q. You don't mean to say, however, that the difficulty of putting the narrow gauge line into good condition and repair for standard purposes would be anything like the cost of building a new one?

A. It would come pretty near it, because you have your railroad to contend with. While you would not remove as much dirt if you do, under the present conditions, as you would if there was no railroad there, I estimate the moving of that dirt would cost you more money by reason of the fact that the railroad was there.

Q. You mean the trouble of operating trains while the construction was going on?

A. That is a part of it, yes, sir. If you could take the whole track out and abandon it and put your teams in there, it would cost you considerably less.

Q. Then if you take the trouble of making rails for moving

trains out of the way, it would cost you a good deal less?

A. Yes, sir, just take the rails and ties out and make it look like a new railroad, it would cost you considerably less.

Q. Mr. Jones, with reference to the point asked you by Mr. Rich, you don't live in Pontotoc, of course?

A. No, sir.

Q. You have been here only a few times?

A. O, I suppose I have been in Pontotoc fifty times in the last three or four years—three years.

Q. You stayed here at no time longer than a week?

A. I believed I stayed here ten days at one time. No, I stayed here seven days—a week.

Q. You don't know anything about the property values of the town of your own knowledge, do you, Mr. Jones?

A. No, sir.

Q. What you say about their not depreciating is just an idea of yours, not based on knowledge of conditions here?

A. That is all.

MR. B. L. HYDE, a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Mr. Hyde, you live in the town of Pontotoc, do you?

A. Yes, sir.

Q. How long have you lived here?

A. I have lived here nearly eight years.

Q. What is your business or occupation?

A. Well, sir, my general occupation is carpenter and painter.

Q. Have you been a carpenter here all of that time?

A. I have not been working at the carpenter's trade regularly, but I have been painting part of the time.

Q. Did you live in the town of Pontotoc during the month of June, 1903?

A. Yes, sir.

Q. Were you present not at any meeting that was held in the court house at the town of Pontotoc for the purpose of discussing the location of the depot of the Mobile, Jackson & Kansas City Railroad Company, between the officials of that company and the citizens of the town of Pontotoc?

A. Yes, sir.

Q. Do you know about what time in the month of June that meeting was held?

A. Well, sir, I couldn't remember exactly the date, because we had two or three meetings, and I don't know exactly the date, and I don't know which one you refer to.

Q. Well, I mean the meeting that was held in June, when Colonel Merrill was here, and when they took a vote as to whether they would locate the new depot on the old site, or on the site it now occupies?

A. Yes, sir, I was here at that time.

Q. Well was that or not a well attended meeting?

A. Yes, sir, there was a pretty good crowd here.

Q. About what number of people were there?

A. sixty or seventy people—business men of the town. Of course, they were not all here, because there might have been some of them out of town, but some of them could not leave their stores.

Q. Was that a meeting in which the property owners of the town were fairly well represented?

A. I think so, yes, sir.

Q. Was it advertised or proclaimed in any way?

A. Yes, sir. I advertised it myself. I went over the town and told the men that Colonel Merrill was coming, and they asked me if Colonel Merrill was coming, and I told them yes, he would be with them, and the day was coming. They telegraphed me from New Orleans to let the people know it, and I went and told them.

Q. And the assembly in the court house was due to your proclaiming the meeting?

A. Yes, sir.

Q. What took place?

A. I don't know, but we gathered here and some one got up and acted as temporary chairman.

Q. Didn't Mr. Franklin, the Mayor of the town, act as chairman?

A. Yes, sir, and Mr. Winston was Secretary of the meeting and taken down the proceedings.

Q. Do you remember whether or not Mr. O. C. Carr was here?

A. Yes, sir.

Q. Took part in the proceedings?

A. I think he was right here.

Q. Well, what was the result of the vote as to the location of the depot on the old or new site?

A. Positively I couldn't say; but I thought it was thirty-seven to nine—the way I thought it was. Some people disagree with the idea, but it was on the record. I don't know what went with the records—I couldn't find it; but I thought it was about that. It may have been a little less or more.

Q. Thirty-seven to nine in favor of what?

A. Nine in favor of going down to the old place, and thirty-seven in favor of going to the new place. I am not positive about that, but I think that is about the number.

Q. What part did the nine take in the meeting? Did you hear anything about their going to take the matter into courts?

A. I did not at that time. There was a good deal of fight on both sides all of the time, but I didn't think they were going to try to take it to any court then.

Q. After that meeting, did the railroad company commence to construct its line on the new route?

A. Yes, sir.

Q. Do you know when the depot was completed?

A. I don't know exactly, but I think it along in either May or June 1904. I am not positive about the date, but they went over there but they didn't get into the new depot until later on in the summer.

Q. The depot was completed and they were using it for such before the injunction in this case was sued out?

A. I think so, sir.

Q. Do you know a man named Jernigan—G. W. Jeringan?

A. Yes, sir, I know him.

Q. Was he here at the meeting in June—the meeting which you spoke of?

A. Yes, sir.

Q. Did Mr. Jernigan vote then?

A. No, sir. Some of the country people voted here. He was from the country then—he lives here now. But he didn't vote at that meeting.

Q. Have people been building houses here in the last two years.?

A. Yes, sir, a good many.

Q. Any new stores constructed?

A. Yes, sir.

Q. Do you know whether rents have increased or decreased in that time?

A. Rents have grown double on most of the property.

Q. In what time?

A. In about four—well, four years, I guess.

Q. In the past four years?

A. Yes, sir. On the dwelling houses, especially. Stores haven't increased as fast as the dwelling houses have, because dwellings are more in demand.

Q. Have dwellings decreased here?

A. No, sir.

Q. Have they increased in the past four or five years?

A. About triple—a majority of the property, for that is the real estate that is for sale.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Now, Mr. Hyde, you say you went around and notified all of the business men?

A. I didn't say I notified all of them. I said r went around town and notified the people—tried to tell them all. I might have missed some.

Q. Did you notify Mr. Bell?

A. I won't say positively that I went directly to the office and notified him. You know that I stood out on the corner and hollered, and you know how loud I can holler. Everybody in town who wasn't away from town knew it. This is the only topic we have had for the last three or four years.

Q. You think pretty surely Mr. Bell should have known about it?

A. I couldn't swear positively that he knew it, because he might have been out of town.

Q. Did you notify Mr. Carr?

A. Yes, sir, Mr. Carr was here and knew it.

Q. Did he vote?

A. I think he did.

Q. Did you notify Mr. Latham?

A. Yes, sir.

Q. Notified him?
A. Yes, sir.
Q. He was here?
A. Yes, sir.
Q. Did he vote?
A. Yes, sir.
Q. Was Mr. Salmon here?
A. Yes, sir.
Q. Are you sure about that?
A. I wouldn't swear about that, but I think he was here a part of the time at the same meeting.
Q. Was Mr. Walker there?
A. I don't know whether Mr. Walker was here or not, but I think he was here.
Q. Did he vote?
A. He voted two or three times. I don't know whether he voted in this one or not.
Q. You don't remember just who all were here and who all voted?
A. No, sir.
Q. How many meetings did you attend?
A. Most all of them.
Q. How many were there?
A. Four, five, six or seven.
Q. Mr. (Mauling) was here?
A. Yes, sir.
Q Did he vote?
A. Yes, sir.
Q. Did he vote in favor of the new site?
A. No, sir, I think not.
Q. And you don't recall which ones voted in favor of the old site?
A. Yes, sir.
Q. Let's see who they were.
A. Messrs. Carr, A. J. Clark,—I am not positive about that now, because the secretary was taking it down.
Q. Just give me your best recollection about it.
A. Mr. Carr, Mr. Clark and Mr. Latham.
Q. Mr. Latham voted against it, didn't he?
A. I think so—I am not postive about that now, but I think

so. I think Mr. John H. Salmon voted against it; Mr. Mauldin and—I am not certain that Mr. Wilson was here.

Q. What is your best recollection about it?

A. I won't say he was here?

Q. That is five returns?

A. Mr. Reuben Brown.

Q. Mr. Jeff Brown?

A. He was here at one time. I don't know whether he was or not.

Q. That is six. Who else? One more?

A. Mr. Walker.

Q. Everybody voted for it?

A. No, sir, I didn't say that.

Q. I mean that voted here?

A. Some of them didn't vote.

Q. The proposition was whether they would rather have it at the old or new site?

A. No, sir, the proposition was whether we could agree with the railroad, not whether they would like to have it there.

Q. The vote wasn't taken, then, as between the old and the new site?

A. Yes, sir, because Mr. Merrill said plainly that he couldn't go down there with anything reasonable.

Q. Didn't he say he would not come here?

A. He said he could not.

Q. Didn't he say he wouldn't go down in that damn hole?

A. Somebody said he said it down there, but I didn't hear him say it in this court house. He said he could not go down there.

Q. Didn't he say he would not?

A. He said he could not.

Q. Have you been present at any meeting when the vote was taken at any other time?

A. I was here, but I went down town.

Q. That was the only vote you saw?

A. Yes, sir, on that particular subject.

Q. You say you didn't hear anybody say they were going to carry it into the courts?

A. Yes, sir, I heard that stated a good deal.

Q. About that time?

A. I don't know whether they made any such talk as that.

Q. As a matter of fact, they never have taken it into court?

A. I don't know who carried it. It got there.

Q. You don't know whether the railroad company first carried it there?

A. I wasn't running the house.

Q. You were running the railroad meeting?

A. No, sir, except what the people asked me to run.

Q. Now, Mr. Hyde, in calling this meeting, or inviting the people, you were acting at the suggestion or request of Mr. Merrill?

A. At the request of Mr. Merrill and a majority of the citizens—I think it was the majority of the citizens—I considered it so at the time—not all of the citizens.

Q. Just tell us who came to you and asked you to go round?

A. I couldn't tell that because it is hard to do.

Q. Could you name one?

A. Yes, several.

Q. Name one.

A. A. L. Penny, I believe because he was an interested man; Mr. Moore, Mr. Pittman, Mr. Pegues—I don't know. I couldn't begin—Judge Lyons—I liked to have forgotten him.

Q. Mr. Pegues, Mr. Lyons, Mr. Moore, and Mr. Penny asked you to do that?

A. They were not all—Mr. Bell, Captain Jack, and I don't know how many.

Q. You don't remember now much about that, do you, Mr. Hyde?

A. I couldn't remember just all they did—they all talked so much?

Q. You say there were three, four or five meetings?

A. Yes, sir.

Q. Lots of meetings?

A. We had one trial about November the third, and we appointed that committee.

Q. Mr. Merrill was there all the time?

A. He hadn't been there; it was the third meeting before he came here.

Q. Didn't Mr. Carr state at one meeting that he would oppose by all means in his power any effort to move the depot?

A. I remember Mr. Carr, in his speech, when the committee wanted to carry it back to Cruses that he said practically that the railroad would not crucify the people.

Q. Didn't you hear Mr. Carr say that he was opposed—that he would oppose by any effort in his power—any effort to move the depot?

A. He said that after he got stirred up.

Q. I know, but during the course of that meeting?

A. I don't know about that; but at one time he said he had no more to say about it, but they would go on, and he finally said he was going to go as far as he could.

Q. That was before any work was commenced on the road?

A. Of course, a good deal of talk before the work.

Q. Did he tell Colonel Merrill that he would fight him, in the court house?

A. I don't know what he told Colonel Merrill.

Q. He said it here publicly in a meeting?

A. I think that was when the Commissioners were here.

Q. Didn't he talk that way before the Commissioners were here?.

A. I didn't hear that.

Q. You say Mr. Franklin presided over that meeting.

A. At the second or third one.

Q. The one Mr. Rich was anxious for you to tell about. That was the one Mr. Franklin presided over.

A. I am not positive, but I think Mr. Franklin was the one that took the vote.

Q. Wasn't Mr. Franklin out canvassing for votes?

A. I think he was at one of the meetings.

Q. Wasn't he at Esparanza that day?

A. He was there one meeting. I could not say about that.

Q. I did not preside at that meeting?

A. I don't think you did. I think Mr. Salmon presided over one, and Mr. Franklin over one.

Q. Mr. Hyde, how is it that you can remember pretty well about what time the depot was moved?

A. Well, I can remember that because I was there loading cotton for the company.

Q. For the railroad company?

A. Yes, sir.

Q. You were working for the railroad company?

A. Yes, sir.

Q. How long had you been emproyed by the railroad company?

A. I hadn't been employed by them any more than anybody else as far as that is concerned. I have been loading cotton for the railroad company and I have worked otherwise for them since I have been in Pontotoc.

Q. Worked on the trains sometimes for them?

A. Yes, sir.

Q. Where do you live?

A. Right on the west side of town, where I have lived all the time.

Q. Close to the depot?

A. Yes, sir about three or four hundred yards.

Q. You are interested in favor of the new depot staying over there?

A. Not any more than anybody else over there.

Q. The fact that the depot is running over there will improve your property?

A. No, sir, I don't see that it will.

Q. Make it more saleable?

A. My property isn't any higher than property here on this side.

Q. What is your property worth?

A. About what all the rest of them.

Q. What is the fair valuation—about?

A. I am not valuing property tonight.

Q. What is your best judgment?

A. About a thousand dollars—no, I would raise that.

Q. How much land have you got over there—about an acre?

A. No, sir, not that much.

Q. Do you know where I live?

A. Yes, sir.

Q. I have fifteen acres, and it is worth only two thousand dollars.

A. I didn't pay a thousand for mine. I only paid sixty for mine. You will get yours sold mighty quick if you offer it for two thousand.

Q. Have you any property over on the east side of town?

A. No, sir.

Q. All of your property is near the new depot?

A. I would like to have some east of town, as far as that is concerned.

Q. Now, Mr. Hyde, just state what the proposition was before that house again—how was the vote taken—what was the proposition on which they voted?

A. Well, sir, I think the proposition, the best I can remember, was that—of course, this proposition had been discussed all over the town until the people know what it was, and the chairman of the meeting made the proposition that all who were in favor of the new depot going out to the new place beyond Mr. Pegues, would stand up, and they stood up; and he counted them, and the secretary put them down on the paper, and he made a proposition that all who were opposed to stand up, and they stood up.

Q. Hadn't Colonel Merrill just stated before that that he would either put the depot where it is now located, or else he would either put the depot where it is now located, or else he would go still further west?

A. I don't think Mr. Merrill threatened to go west.

Q. Wasn't the Hamp Beckham place under discussion?

A. He went on to say they had a direct line out by the Hamp Beckham place. I remember him saying that.

Q. Wasn't the vote that—as to whether the people would prefer having it out there, or whether they would still have it further west?

A. I don't think it was ever before the house that way, Mr. Fletcher.

Q. Did you consent that that body of men gave their consent to having the depot put out where it was in preference to having it there at the old depot site?

A. It was the understanding of the people, in order to meet with the agreement of the railroad company to go out there. It has never been the desire of the people to go plum out of town to get the depot; they never wanted to get rid of the depot. That has never been their idea. I did not want the depot run out of town, or to run out to Hamp Beckham's.

Q. Was the depot, where they put it, inside of the corporate limits when that vote was taken?

A. I think so. It was inside of the corporate limits—that became the corporate limit. They had appealed it to the Supreme Court.

Q. And that Court didn't decide it until the next January—after that fourth of July?

A. I don't think they did.

Q. What the railroad company was proposing to do was to put the depot out of the corporate limits?

A. No, sir, I don't think so. The engineer who surveyed it said the Hamp Beckham line was the most feasible.

Q. You say how the vote stood?

A. I thought it was thirty-seven to nine—I am not positive about that, because I never tried to remember it at all.

Q. Are you positive, Mr. Hyde, there was a majority in favor of that at all?

A. O, yes, I know that.

Q. How many voters were there in town at that time?

A. White men, property owners? There might have been seventy—not over seventy men, I don't think—white men.

Q. Only property owners in the town of Pontotoc, voted then?

A. There may have been some that didn't have property or interest at all.

Q. You don't mean to say that people voted there who were not property owners?

A. No, sir, I don't say that, because there might have been people interested in the town who were not property owners at that time.

Q. You don't mean to say that the people who had business interests in the town of Pontotoc were in favor of putting the depot out there?

A. No, sir, not just to say they wanted it out there.

Q. Are they in favor of it now?

A. They are just like they have been all of the time—if they could get to terms and they could not come down there in the hollow where it was then.

Q. If they could get it down there in the hollow, they would prefer to have it there?

A. Some of them would.

Q. Wouldn't the majority of the business men of the town and property owners?

A. I don't know.

Q. Don't you think it would be better for them to have it at the old site than where it is now?

A. If you want my private opinion, I should say it is a disadvantage to the people, because when farmers come in here with their wagons they go down there, and they jam up. Of course, it is the interest of the town, because they have got to get their draymen down. The draymen have got to go down there for the stuff—the wagons in a jam when the trains could not get in and out, and the people could not get in and out, and men would stand there for half a day—three-fourths of a day—waiting for their time to come, when the "Doodlebug" had one or two trains a day. The people could not do business down there in that hole.

Q. Suppose the railroad company should construct a standard depot down there, two hundred and fifty feet wide and two thousand feet long and grade them down, would that make things all right down there then—would that jammed-up condition exist there then?

A. Yes, sir, because there is only one street down there.

Q. I mean anywhere down there near that place? They don't want to put it in the street.

A. Nowhere near to put it.

Q. Suppose that a railroad company's engineer had explained that if it was to construct standard depot grounds two hundred and fifty feet wide, could they do that then?

A. They could, by getting dirt and hauling it in there.

Q. After they had cut that two hundred and fifty feet wide space down there, would there be that conjested condition of track down there?

A. Yes, sir, because there is only one street down there to go in and out.

Q. How many at the other depot?

A. Other streets down there.

Q. How wide are the depot grounds down there?

A. Two hundred and fifty feet wide they are down there now. There would be enough room going up and down that way, but there are no streets opened up that way. If the town would go to work and dig that hill at Dr. Mitchell's, they could make streets to get in and out. Of course, they could build a

railroad anywhere. They could build a platform down there and set it up on it.

REDIRECT EXAMINATION BY MR. RICH.

Q. Now, Mr. Hyde, I understand you to mean, substantially, your testimony about this meeting, that Mr. Merrill came here and said, I am going to spend a large sum of money in increasing your transportation facilities; to go down into that old depot site would cost me unnecessarily a large sum of money; I can save a very considerable sum if you can make to me some concession about the location of the depot? And when that proposition was submitted to this meeting of the citizens, it was passed by an overwhelming majority towards making that concession?

A. Mr. Merrill labored under the impression that the majority of the people in the town of Pontotoc was willing to submit to the depot going out yonder. He said that it would cost him an unreasonable amount to go down in the hollow, and he wanted to do the right thing.

Q. And immediately after the meeting the engineers and laborers went to work conststructing the railrond?

A. Yes, sir.

Q. Over the line that had been agreed to at that meeting?

A. Yes, sir.

EXAMINATION BY MR. FLETCHER.

Q. How long after that meeting until they did actually commence work?

A. I don't think that it was very long before the engineers went to work to surveying out the line.

Q. At the time they commenced to shoveling out dirt.

A. That was in November.

MR. RICH: Wasn't a committee appointed to procure a right of way?

A. We had a committee for that purpose.

Q. Was that at the same meeting that this vote was taken?

A. I think not. The committee was appointed at the second meeting.

Q. After that?

A. No, sir; before that.

Q. Mr. Wilson was on that committee.

A. Yes, sir and Mr. Boone.

Q. Now, Mr. Hyde, you said—how much did Mr. Merrill say it would cost to run down there, additional?

A. I don't remember. It seems to me like that engineer said one hundred and twenty-six thousand dollars.

Q. Cost more to run down there?
A. Yes, sir, I am not positive.
Q. Mr. Jones here?
A. I don't remember that.
Q. Look at that gentleman there.
A. He was here—I don't know that he said that.
Q. It was on the idea that it would cost one hundred and twenty-six thousand dollars more than the people said that, wasn't it?
A. No, sir.

MR. W. R. PEGEUS, a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. You are a resident of the town of Pontotoc?
A. Yes, sir.
Q. How long have you lived here?
A. About fifteen years.
Q. What is your business?
A. I am in the mercantile business.
Q. Been in that business all of that time?
A. Yes, sir, with the exception of about six months of that time.
Q. You held official position in the county, too?
A. No, sir, not in the county.
Q. That was your brother?
A. Yes, sir.
Q. Mr. Pegues, were you present at a meeting held in June, 1903, in the court house here, for the purpose of discussing between the people of the town and the railroad officials, the location of the depot?
A. Yes, sir.
Q. Was Mr. Carr present at that meeting?
A. I think he was, sir.
Q. Do you know whether or not Mr. Bell was present?
A. I couldn't tell you.
Q. Don't remember about that?
A. No, sir.
Q. Was any—after discussing the matter, was any vote taken as to where the depot should be located, whether on the present site or on the old site—the new depot?
A. Yes, sir, there was.
Q. What was the result of the vote?
A. I think—my recollection about that was it was twenty-seven to seven.
Q. In favor of the new site?
A. New site, yes, sir.

Q. What else was done at that meeting—any committee appointed for the purpose of soliciting rights of way?

A. I think the committees were appointed before that.

Q. Well, did those committees proceed to secure rights of way along that road?

A. Yes, sir. I was a member of that committee myself.

Q. And did the company, just as soon as conditions would permit, go to work to building the railroad along that route?

A. I suppose so, yes, sir.

Q. Did you hear of any action taken, or to be taken, in the courts any organized action among the objectors?

A. No, sir, not immediately after that.

Q. All of that was done prior to any order or appeal to the Railroad Comimssion about the matter, was it? When did this matter get to the Commission—do you remember?

A. I think it was after—that is, after the depot had been established and built where it is now—I think it was after that before there was anything specially done.

Q. Was or not the depot completed and in use, before this injunction was sued out?

A. Yes, sir, I think so.

Q. Now, Mr. Pegues, you are acquainted with property values generally about Pontotoc, and the immediate neighborhood here, are you not?

A. I think so, yes, sir.

Q. Has property been decreasing or increasing in the past five years?

A. I think they have been increasing all over town.

Q. Have they decreased in the last few years?

A. No, sir.

Q. Have rentals decreased or increased?

A. I don't know whether I would be authority on that or not, because I do not rent any except my store house. I have understood that the rents have all gone up.

Q. You rent a store house?

A. Yes, sir, but I pay the same rent that I paid five years ago.

Q. Who do you rent from?

A. My brother-in-law, Mr. Brown.

Q. Do you know Mr. Jernigan.—Mr. G. W. Jernigan?

A. Yes, sir.

Q. Was he present at that general meeting that you speak of?

A. I couldn't tell you.

Q. Mr. Pegues, have you had drayage done from the new depot since?

A. Yes, sir.

Q. What is the difference in cost to you?

A. Well, there is not very much difference. There is a little difference.

Q. Did you at any time have it done for the same price?

A. Yes, sir.

Q. How long?

A. Why, I suppose it was for five or six months after that depot was established there.

Q. Had it done at the same price?

A. Yes, sir, I did. I will explain to you how that occurred: When they first began to bring freight over to the new depot, Mr. Daniels here was doing my draying at the time, and I went to him and asked him if he would do it at the same price, and he said he would not, and I told him all right then, you need not haul any more, because we can get a man who will do it at the same price, and Mr. Cruse took my drayage at that time, and done it at the same price.

Q. The increased cost of draying was due to the bad condition of the roads?

A. I think so.

Q. I will withdraw the question and put it in proper form: To what was due the increased cost of drayage the last winter?

A. The bad roads.

Q. To whom was that due—who was responsible for it—the railroad or the town of Pontotoc?

A. I don't know.

Q. Was the railroad company responsible for it in any degree?

A. No, sir, I think not. I think the excessive rains.

Q. As a matter of fact, everything has increased in price—the cost of living has gone up?

A. No question about that, sir. Everything has gone up. You may take a year or two years ago, for instance; you may take a cord of stove-wood that you could buy that for two dollars; now they charge you three for it.

Q. Has or not the drayage, the cost of drayage, from the new depot gone up in proportion to cotton and everything else that is raised and produced around here?

A. I don't think it has in cotton. I don't think it has gone up in proportion to cotton.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Mr. Pegues, at that meeting that you speak of, you say the vote was twenty-seven to seven?

A. That is my recollection.

Q. Was that action fairly presented before the people as to the preference between the two depots?

A. My understanding about that meeting is that the notice was given that we would meet here at that time to take a vote whether we should agree for the railroad company to move the depot from the old site down here to the new one—to the present site—where they have it now. That was the notification that I got.

Q. Did Mr. Merrill make a statement before the vote was taken?

A. I don't remember his statement.

Q. Did you hear Mr. Merrill say—

A. My impression was, and that was the notice I got, that we would meet here on that occasion to settle this matter, and that was what that meeting was for, to see whether we would allow the railroad company to move the depot or not, and that vote was taken just that way.

Q. Have you heard Colonel Merrill say repeatedly it was impossible to construct the depot down here by the old line?

A. Yes, sir.

Q. And that idea had gotten into the minds of the people, that it was useless to talk about the depot down here at the old site?

A. Well, I don't know whether it was useless to talk about it?

Q. I mean seriously considered.

A. Yes, sir.

Q. It was simply a question with these people whether they would have it out yonder where he wanted to put it, or not have it at all?

A. No, sir, I think not. They were bound to have a depot.

Q. There is some point further west?

A. I don't think that point further west was considered at our meeting.

Q. But you say, as you remember now, there were thirty-four votes cast there?

A. Yes, sir; twenty-seven to seven.

Q. Was that a representative meeting?

A. Yes, sir. We had a representative here.

Q. Was a majority of the business men of the town here?

A. Yes, sir.

Q. And voted?

A. I couldn't tell you about that except myself; I voted.

Q. Mr. Pegues, were you present—you stated awhile ago that the depot was constructed before the Commission was called into this matter. Aren't you mistaken about that?

A. I don't think I said that.

Q. I thought that was the statement. It was after the depot had been established that the Commission was appealed to. Is that what you mean to say now? Your answer to the question indicated that it was after the depot had been established that the Commission had been appealed to?

A. In that case over yonder.

Q. This meeting was brought to the attention of the Commission in the fall or winter after the meeting you speak of?

A. Yes, sir; in the case of the depot over yonder.

Q. And the litigation was started by the railroad company against the Commission, as you understand it in the Federal Court; that is a fact, isn't it, that the railroad company began the litigation by enjoining the Commission in the Federal Court, or do you know about that?

A. I don't think that I understand you.

Q. At the beginning of the litigation, that was by the railroad company against the Railroad Commission—they started the lawsuit?

A. I thought the Railroad Commission started the suit.

Q. That is a matter that of course nobody but a lawyer might understand, but as a matter of fact, it was the other way. The railroad company went to the courts first with it.

A. I was mistaken that far.

Q. Mr. Pegues, speaking about this drayage matter, isn't it a fact that the depot being located at a greater distance—

MR. RICH: Mr. Pegues, as I understand it, it made an order about this before the railroad company took any action at all? That is what you mean?

A. Yes, sir.

MR. FLETCHER: But that is not the litigation. At the time that they made the order, the town had been without a depot for a year?

A. Yes, sir.

Q. Now, the drayage question—the drayage is now increased over what it was when you were at the depot down there at the old site?

A. I think so, yes, sir.

Q. That is due to the fact that it is a greater distance to haul, isn't it, Mr. Pegues?

A. It is like I stated awhile ago, I suppose a part of it is due to the fact, a part of it is due to the increased price on everything.

Q. There was an immediate advance on the part of some draymen in rates as soon as the depot was put out there?

A. I suppose there was.

Q. It was so in Mr. Daniel's case?

A. Yes, sir.

Q. Now, you said awhile ago that there had been no depreciation in the value of property otherwise, there has been no final settlement of this depot question at all, has there?

A. No, sir.

Q. It has always been in litigation, some uncertainty about where it would finally land?

A. Yes, sir.

Q. You don't undertake to say what would be the effect on property values in case it should be finally settled over yonder?

A. No, sir.

Q. Your property, Mr. Pegues, all lies near the new depot?

A. Yes, sir.

Q. The business house you were in, I believe you stated you were renting that?

A. Yes, sir.

Q. And your property is over near the new depot?

A. Yes, sir.

Q. You have been very active and anxious about getting the depot to stay over yonder?

A. No, sir, not exceedingly.

Q. You haven't been anxious to have it put there?

A. No, sir, I can't say that I have. The fact is, I would give the railroad company the money today to have my business

restored as it was before it ran through it. I gave them the right of way through it.

Q. You think it has decreased the value?

A. No, sir.

Q. It has enhanced it?

A. I don't know that it has, Mr. Fletcher, but it is worth at least as much as it was when I bought it.

Q. You have circulated petitions in behalf of the railroad company in this matter?

A. Yes, sir. Would you like for me to tell you where I circulated them?

Q. I have no objection.

A. I don't say it in behalf of the railroad company, but I have circulated petitions, but I was informed that it was not in behalf of the railroad company.

Q. The petition to the Commission to withdraw and dismiss the matter?

A. Oh, I was told that the railroad company had nothing to do with any circulating petitions, and I want to state this now, that I have always got pay for it—for what I done, and didn't go around and do it voluntarily.

MR. G. W. JERNIGAN, a witness sworn on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Mr. Jernegan, do you live in Pontotoc?

A. Yes, sir.

Q. How long have you lived here, sir?

A. I have lived here sixty-two years now.

Q. Had you previous to that time lived in the county near Pontotoc?

A. Yes, sir. I have been living in the county all of my life.

Q. Were you present, Mr. Jernigan, in the courthouse in Pontotoc sometime in the month of June, 1903, when a public meeting was held to discuss the question of locating the depot of the M. J. & K. C. Railroad Company?

A . I was.

Q. What number of people were here, about?

A. Well, I couldn't say exactly. I suppose somewhere about between fifty and seventy-five persons?

Q. Is it your opinion that a majority of the business people of this town were there?

A. Well, I would say that there was.

Q. Was Mr. Merrill, the president of the railroad, there?

A. Yes, sir; he was here.

Q. Well, was there a general discussion of the depot location at the time?

A. Yes, sir; seemed to have been.

Q. Any vote taken as to whether Mr. Merrill, as president of the railroad company, should be allowed to locate the depot at the place where it is now located?

A. There was, yes, sir.

Q. What was the result of that vote?

A. I think there was twenty-seven voted for the new location while there was seven only on the other side.

Q. Voted for the old location?

A. Yes, sir.

Q. Twenty-seven voted for the location where the depot now is?

A. Yes, sir.

Q. And seven voted for the old location?

A. Yes, sir.

Q. Did you buy property when you came here?

A. Yes, sir.

Q. Bought a home?

A. Yes, sir.

Q. Do you know anything about property values in Pontotoc?

A. Yes, sir, I have had a little experience in that.

Q. Everything has gone all to pieces here since this railroad came here hasn't it?

A. It seems it is up a little.

Q. I mean property values have decreased.

A. Sir?

Q. Gone down, haven't they?

A. I think not, sir.

Q. Have they increased?

A. I think they have, yes, sir.

Q. Have rentals gone down?

A. No, sir.

Q. Have rentals gone up?

A. I think they have, sir.

Q. You think property values have gone up, you know they have?

A. Yes, sir.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Mr. Jernigan, do you know whether that meeting you spoke of was advertised or not?

A. Well, I don't know about that, Mr. Fletcher. No, sir, I don't.

Q. And you say you think there was a majority of the business men present?

A. Well, sir, there was a good many there. I couldn't say what number. I couldn't say about that.

Q. You can't recall many of them who were present, now, can you? You say Mr. Carr was here, you remember that?

A. Yes, sir. Mr. Carr was here.

Q. Do you recall whether Mr. Walker was here or not?

A. I don't remember whether Mr. Walker was or not. Mr. Salmon was—Mr. Pegues.

Q. That has been sometime ago?

A. Yes, sir, over—that is over two years ago.

Q. Was there any discussion before the vote was taken over there?

A. Yes, sir, I don't remember about that—when the discussion was.

Q. Do you remember hearing Mr. Merrill make any statements about it?

A. Well, he made a statement, but I don't remember what he said.

Q. Didn't he say substantially that it would be impossible for him to construct a railroad down here along the old line?

A. Did he say that?

Q. Yes, sir.

A. He may have said it. I don't remember whether he did or not.

Q. Wasn't it the understanding of the assembled body, Mr. Jernigan, that under no circumstances would the railroad consent to build the line by the old depot site?

A. How is that, Mr. Fletcher?

Q. Wasn't the understanding among the people who were present that under no circumstances, under no conditions, would the railroad company construct their line down by the old depot?

A. I didn't hear it that way.

Q. Did you understand that that was simply a proposition as to the preference between the new and the old depot sites?

A. I thought it was.

Q. Did you vote at that meeting, Mr. Jernigan?

A. I did not.

Q. Was there any discussion by anybody favoring the old depot site at that meeting?

A. Mr. Carr, said something about it but I don't remember just what he said.

Q. Did you attend any other railroad meeting besides that one?

A. No, sir, I think not.

Q. That was the only one that you attended?

A. I think that was all.

Q. You think the vote was twenty-seven to seven?

A. Yes, sir.

Q. That would be a total vote of thirty-four?

A. Yes, sir.

Q. You are a member of the Board of Aldermen of the town of Pontotoc?

A. Yes, sir.

Q. What is about the voting strength of the town of Pontotoc?

A. I don't remember—about one hundred and eighty-five.

Q. Now, when you speak about property values increasing here, do you know what the cause in the increase of the property values is?

A. I don't understand.

Q. Has there or not been an increase of property values all over the country?

A. Yes, sir, there has been an increase in the land values all over the county.

Q. Isn't it a fact that the farming lands have as much as doubled in value in the last five years?

A. I think in some places they have, sir.

Q. It would not be an extravagant estimate to say they have doubled in value all over the county?

A. I think not.

Q. Has there ever been a time when it was understood that the depot was finally located over yonder?

A. No, sir.

Q. There is no certainty about where the depot was to go?

A. That is my understanding about it.

Q. Your property, Mr. Jernigan, all lies near the new depot?

A. Yes, sir, some of it lies near this depot. I live nearer this depot than I do the new one.

Q. You live on the west side of the old narrow gauge road?

A. Yes, sir.

Q. And your property extends up and down about the oil mill, there?

A. To the street this side of the oil mills.

Q. Mr. Jernigan, do you know how much money has been spent by the town of Pontotoc in the effort to make that street running down there by the new depot—to improve it?

A. I could not tell you exactly, I suppose about something like between fifteen and eighteen hundred dollars in all. There are men here now who know more about it than I do. That was on both roads, on these two streets.

Q. Running to the new depot?

A. Yes, sir.

REBUTTAL EXAMINATION BY MR. RICH.

Q. Mr. Jernigan, you say the voting strength of Pontotoc is about one hundred and twenty-five?

A. I think that it about it, Colonel.

Q. The corporate limits have been extended since June, 1903, have they not?

A. I think it is before that they were extended. It was in a suit awhile—

MR. FLETCHER: It was not definitely decided at that time by the Supreme Court?

A. It has been decided since then.

Q. You speak of the voting strength now, not then?

A. Yes, sir.

SURREBUTTAL EXAMINATION BY MR. FLETCHER.

Q. What would you say was the voting strength then?

A. I could not say, for I knew nothing about it.

Q. More than a hundred, you suppose?

A. I suppose so, yes, sir.

MR. H. S. JONES, being recalled by the Complainant, for further cross-examination, testified as follows:

Q. I just wanted to ask you, Mr. Jones: This part of the narrow gauge road which is not now in use, is sixty-nine hundred feet, or fifty-nine?

A. Sixty-seven hundred feet.

Q. At the time when you established your line, you did not contemplate using that part of the line as any part of your main line, did you, Mr. Jones?

A. When we first made our survey, yes, sir.

Q. When you established the line which is now the line?

A. When I established the present located line.

Q. Yes, sir.

A. Did I contemplate using this sixty-seven hundred feet as a part of the main line?

Q. Yes, sir.

A. No, sir, I did not.

Q. Did you contemplate using it as a side track or using it at all any way?

A. It was always considered that it could be used as a track upon which to deliver car-load lots down into the town of Pontotoc.

Q. Now, the intention of the railroad company, when it established that line, was to entirely abandon that part of the line, wasn't it, Mr. Jones?

A. As a part of the through line?

Q. Yes, sir, as part of the through line? And no effort has been made—I believe that you said that no steps had been taken towards broadening it or standardizing it?

A. Not yet.

Q. Was it the policy of the railroad to have used that for the purpose of delivering car load lots unless they were required to do so by some authorities of the state, Mr. Jones? Are you able to answer that?

A. I think that if that gin had kept in operation, and other industries had grown up around that narrow gauge line, it would

have been the policy of the railroad company to have taken care of those industries.

Q. Now, in view of the fact that those industries have been moved away, so far as you know, it is not the policy of the railroad to operate that railroad at all?

A. As far as I know, no, sir.

Q. You see no reason why it could be profitable or advantageous to the railroad company to do it?

A. No, sir, not unless industries should spring up along there and make arrangements with the company for operating it and give them facilities.

Q. That would be a matter entirely for future development?

A. That would be a matter between the railroad company and the parties who wished to establish industries along the line. The railroad company's policy in that regard is very liberal —always has been—to give industries along the line every facility for doing business, and I don't see why it could be made any difference in Pontotoc.

REBUTTAL EXAMINATION BY MR. RICH.

Q. Are you familiar with the fact, Mr. Jones, that I, as the representative of the company, offered to the Railroad Commission to operate a spur track over the old right of way of the narrow gauge line, for the purpose of delivering car load lots of freight?

A. Well, I have heard a great deal as gossip, and I don't know but what I might have heard you say something about that.

Q. You only know it as hearsay?

A. As hearsay, yes, sir.

Q. Are you familiar with the fact, too, that I, as the representative of the company, have offered to the representatives of the State and of the town of Pontotoc, to build a first-class highway from the business part of town to the new depot?

A. I have heard you say that several times on a visit to this town.

Q. You only know it as hearsay?

A. I have heard you say it.

SURREBUTTAL EXAMINATION BY MR. FLETCHER.

Q. Mr. Jones, this talk that you heard about them delivering car load lots was after the inception of this litigation, was

it not? I don't mean this particular case, but the litigation generally with reference to the Pontotoc depot?

A. No, sir, I have always considered that if the industry had thrived that we would have been compelled, even if we did not want to, we would have been compelled to have offered that industry facilities with that side track.

Q. Now, Mr. Jones, at the time that the railroad company ceased to deliver freights and passengers here at the old site, those industries were then in operation, were they not—the stave factory and the gin?

A. I don't know about the stave factory. No, I don't recall the gin being in operation the first few visits that I made to Pontotoc.

Q. Wasn't the stave factory?

A. O, the narrow gauge was being operated at that time.

Q. Yes, sir. Now, when you moved that, you made no arrangements to accommodate these people who had these industries there near the old depot?

A. That was not my place.

Q. As a matter of fact, don't you know that no arrangements of that kind were made? Of course, it was not in your department, I understand that?

A. No, I don't think any arrangements have been made.

Q. Now, this proposition to grade the roads, you have never seen any written proposition of that kind, have you, or no offer being made?

A. No, I never have seen any written proposition?

Q. And all of those were made after the Railroad Commission had made the order requiring them to remain at the old site?

A. No, so far as my hearsay information goes, it was before. My hearsay information, is that Mr. Merrill made that proposition and that was long before there was any litigation.

MR. W. F. AUSTIN, a witness sworn on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Mr. Austin, you are a citizen of the town of Pontotoc, are you?

A. Yes, sir.

Q. How long have you lived here?

A. Why, I have been here about two years, now.

Q. Where did you live prior to that time?

A. Right in the northeastern portion of the county.

Q. You have lived in Pontotoc county all of your life?

A. Ever since I was ten years old, yes, sir—twenty-eight years.

Q. What is your official position?

A. Sheriff of the county.

Q. Do you remember any meeting being held in the town of Pontotoc in the courthouse of the county during the month of June, 1903?

A. I remember them, yes, sir, but I wasn't present at the time. That was before I moved here. I remember afterwards hearing them discussed as to how they were.

Q. What did you understand those meetings to be for?

Objection by Mr. Fletcher, "That is the worst hearsay I ever heard of."

Q. Go on, Mr. Austin.

A. Why, I heard several make the statement after I moved here, of course I knew that they were in litigation over the railroad, as to the location where the depot should be, and several of the citizens—I couldn't call their names, that they had this vote in town, and I heard two or three of them, different ones, say that they were twenty-seven in favor to seven of putting the depot where it is now located.

Q. As a result of your information and understanding—as the result of those meetings, did you locate any industries in the town of Pontotoc?

A. Certainly.

Q. What was it?

A. I established a brick plant on the line where it is now located, in view of the fact that my belief was that it would always be there. We, the people of the town of Pontotoc, had a meeting here before this, and it seems to me that if there was that much difference in them, that there would not possibly ever be made a change in it.

Q. Are you familiar with the property values in the town of Pontotoc?

A. Very well, sir. I have been trying to buy for eighteen months here.

Q. Have you bought a home here?

A. I bought a lot to build on.

Q. Have any difficulty in getting it?

A. No, sir, I don't know that I did. Property has been advancing here ever since I came to the place, and I was a little undecided as to what part of the town I would build on, but finally bought on the east side of the old line. I bought from Mr. Fletcher here a lot adjoining his residence.

Q. That is in the town of Pontotoc, is it?

A. Yes, sir. I paid five hundred dollars for the lot I have bought from Mr. Fletcher. A gentleman told me that he had offered Mr. Fletcher five hundred dollars for it; that he had offered it for five hundred dollars several months before that, and sixty-eight or eighty feet more than I bought, but at the same price.

Q. So Mr. Fletcher's property has increased in value very much in the last few months?

A. Yes, sir. I would not take five hundred dollars for the property I bought from him.

Q. You have not observed any anxiety on Mr. Fletcher's part to unload his real estate because the railroad company is ruining the town?

A. I asked him if he would sell his house and lot, and he said no he would not sell it at all, but he would sell me this lot.

Q. That is the case with most of these anti-railroad people, too?

A. It seems that way. There was some property here on the main street of the town within one hundred yards of the court-house, sold a few days ago for one thousand dollars. I asked the party this morning who bought it what he would take for it, and he said he didn't want to sell it at all, but he finally offered it for fifteen hundred dollars .The deed has been made fifteen days that he paid one thousand dollars for. I just told him that we had several hundred thousand brick on hand, and this lot, we could build on it to advantage, and to name the least money that would buy it.

Q. You think the property values would be still further increased and enhanced by a settlement of this controversy?

A. I do, yes, sir.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Mr. Austin, at the time when I made an ineffectual effort to sell my lot, eighty feet more than it is now, was it before the decision of the Supreme Court in this depot case?

A. I couldn't tell, Mr. Fletcher, as to that. Mr. Hyde just told me he asked you why you sold it.

Q. But after this case was decided, I was able to sell, a less amount for five hundred dollars—you bought since that decision?

A. Yes, sir, I bought a month ago.

Q. Yes, sir. It has been pretty generally understood here that unless there is some way to get the Supreme Court to change its mind, that the depot question is settled in favor of the old site, isn't it? Isn't that the current opinion among the people?

A. I don't know as to that.

Q. When you learned that there was actually twenty-seven people in favor of putting the depot over there, did you consider that a majority?

A. I considered that it was a majority of the people taking the vote, and I knew the people around the courthouse would be bound to know these things.

Q. Twenty-seven is a very small majority of the citizens of the town of Pontotoc?

A. I guess so, yes, sir; and I couldn't tell you whether there was any of them up there or not. I don't know as to that. I just heard about it after.

Q. When you located your brick plant, did you have any understanding with the railroad companies that they would furnish you with railroad facilities.?

A. Of course. They were to put in a spur if we could grade it and put in the ties.

Q. You took up the matter with the railroad company, and they agreed to furnish you with those things?

A. Well, sir, the investment would pay the railroad company.

Q. That brick mill is north of the oil mill?

A. Yes, sir.

Q. And your understanding is that the oil mill had some agreement with the railroad company of some kind?

A. I don't know anything about that.

Q. You said you paid eight and a third dollars rent first?

A. Yes, sir.

Q. That is still renting for eight and a third dollars?

A. I don't know about that, but Mr. Walker, there, I think has twelve or sixteen residences in town, and I am informed this morning by one of the men that have been renting from him, that after the first of February the rents of all his buildings would be twelve and a half; that was ten dollars. That was Mr. Winston, down here in his office. I got that information from him this morning. I knew that the rents had advanced.

Q. The same thing is true of the values of property everywhere, Mr. Austin?

A. Yes, sir.

Q. Farming lands renting for more?

A. I don't know about the rents, but the real estate of the county, of course, has advanced some.

Q. Do you say it would be doubled in value—would be an extravagant statement?

A. I think so. That is, they don't seem to put it that way in the county—not over twenty-five per cent., that is the last two years. It has been advancing for four or five years.

REBUTTAL EXAMINATION BY MR. RICH.

Q. You are speaking of the assessments?

A. Not from the assessments. It has advanced. I don't know what the property, what they held it at that time, four or five years ago, that is, real property, it has advanced from twenty-five to thirty per cent.

MR. J. H. ROWZEE, a witness introduced on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Mr. Rowzee, did you live in the town of Pontotoc when they were building the narrow gauge line in here?

A. Yes, sir.

Q. Did you subscribe to the fund of fifty-five hundred dollars to aid in getting the railroad company into the town of Pontotoc?

A. Yes, sir, I did.

Q. Was there, or not, any contract by which the depot of that line was to be located at the old site?

A. None that I knew of.

Q. You never heard of it?

A. No, sir.

Q. How was that subscription made—was it made by vote, agreeing to pay a certain amount of money at a certain time?

A. I think they just went around with a list first, and after they got up the amount, secured the amount, why they afterwards taken the notes for it.

Q. When did you first hear of any contract in that connection?

A. I don't know that I heard it at all.

Q. Have you heard of it since this depot litigation has been in progress?

A. No, sir, not since then.

Q. Are you acquainted with property values about the town of Pontotoc?

A. A little, I reckon, I deal in it some.

Q. Have they decreased or not, in the last two years?

A. Well, I think they have increased some. It seems to me like they have.

Q. Have rentals or real estate decreased or increased in the town of Pontotoc?

A. I don't know as to that. I don't as to the rents. I haven't rented any.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Mr. Rowzee, you were not on the committee that made the arrangement with Colonel Faulkner?

A. No, sir.

Q. About the railroad?

A. No, sir.

Q. You don't know anything about whether they had or had not a contract about it?

A. No, sir.

Q. You don't know what the committee did, or anything about it?

A. No, sir, I don't know what they did. I don't know anything about the committee. Never heard of it before.

Q. You don't know—speaking about property values increasing, Mr. Rowzee, it is a fact, isn't it, that the understanding

is general throughout this community, that the depot question has never been settled?

A. No, sir.

Q. It is uncertain?

A. No, sir.

Q. Whether it would be down here at the old or new site, nobody has ever been able to tell for certain, have they?

A. No, I think not.

MR. G. W. JERNIGAN, a witness recalled on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Mr. Jernigan, were you a subscriber to the fund of fifty-five hundred dollars to aid in getting that narrow gauge railroad into Pontotoc?

A. I was, yes, sir.

Q. About 1889?

A. Yes, sir.

Q. Was there or not any contract between you and the other subscribers to the fund, that the depot should be located at what is known as the old site?

A. There was not at that time.

Q. Did you ever hear at that time of any such thing?

A. I did not.

Q. Where did you live at that time?

A. Six miles in the country, sir.

Q. You were subscribing just as a general helper in the welfare of the community?

A. Yes, sir.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Mr. Jernigan, were you on the committee that made that arrangement with Mr. Faulkner, went and conferred with the officials?

A. I was not.

Q. You don't know anything about what arrangements they made?

A. No, sir, I do not.

Q. Who was it that presented the matter to you, and secured your subscription, Mr. Jernigan?

A. Mr. Carr, Mr. Oliver Carr.

Q. That has been how long ago, now?

A. I don't remember how long ago. It has been a good while back, I suppose it has been—

Q. About ten years ago?

A. Sixteen or seventeen years ago.

Q. You don't remember anything that was said or done or passed between you and Mr. Carr at that time?

A. No, sir.

Q. All you know is that you do not at this time recall anything about a contract about going down to any particular place?

A. No, sir; not that I know of.

Q. If there had been any such thing, you would have recalled it?

A. I think probably I would.

Q. If any such arrangements had been made and mentioned to you, you would have remembered it now, would you?

A. Yes, sir.

REBUTTAL EXAMINATION BY MR. FLETCHER.

Q. Living in the country, six miles away, is a matter of indifference to you as to where the depot was located?

A. It was at that time.

Q. It is not now, a matter of indifference with you, though, is it?

A. No, sir.

MR. W. M. ROBERSON, a witness introduced in chief by the Complainant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. Your name is W. M. Roberson.?

A. Yes, sir.

Q. What business are you engaged in, Mr. Roberson?

A. Hotel business.

Q. How long have you lived in the town of Pontotoc?

A. I have lived here about twenty years. Moved here in 1885, I believe, it was—fall of 1885.

Q. You are the proprietor of the principal hotel, are you?

A. Yes, sir.

Q. Now, Mr. Roberson, I want you to state what, if any, difference it would make in the convenience of the traveling public, was between the location of the depot on the old site and the place where it is now being operated?

A. I only know from what I hear drummers say.

Mr. Rich objected to the testimony of Mr. Roberson on the ground that the same is hearsay.

A. (cont.). They claim it is a great inconvenience, especially in winter.

Q. What do you know, of your own knowledge, with reference to the convenience to the traveling public in the past, since this depot was temporarily changed?

A. Well, it is a great source of inconvenience now, compared to the old location.

Q. Well, why?

A. It is over a mile there, and since that depot has been there we have had extra bad road condition—tried to make a new road and it is almost impassable, couldn't hardly get there.

Q. Mr. Roberson, do you think that the location of the depot finally at the alleged new site would have a beneficial or injurious effect upon property values in the town—in the east part of the town of Pontotoc?

A. My honest opinion is that it would deteriorate the property values in the old site right around here—that is my honest opinion.

CROSS-EXAMINATION BY MR. RICH.

Q. The chief inconvenience to the traveling public, Mr. Roberson, occurred last winter when the roads were bad?

A. That was the worst.

Q. You haven't heard any general complaint before or since then?

A. No, not except the distance.

Q. Who was responsible for the bad roads, the town of Pontotoc or the M. J. & K. C. Railroad Company?

A. I don't know. The roads were bad. I don't suppose either one of them made the roads bad—bad weather; we had very bad weather, you know; the freight hauling made the roads bad.

Q. You understand that it is the disposition of the people who insist upon the old location, to visit the bad weather upon the M. J. & K. C. Railroad Company?

A. They want to put everything on the Kansas City Railroad Company that they can stand.

Q. That is about the fact of the business—that very nearly everything is laid at their doors? That is what I thought. I am glad to have a frank statement about it. Your business has been very seriously affected over there, adversely, hasn't it?

A. I do not know, sir. About the time that I took charge of the hotel, this railroad company's controversy came up. I was not there at the time.

Q. Well, let's take the past week as an instance. You have not done very poor business the past week?

A. Not so very poor. I have had about as many as I care for this week.

Q. You have had more people than you could take care of?

A. Yes, sir.

Q. All came on the M. J. & K. C. R. R.?

A. Yes, sir.

Q. Do you think the controversy has kept many from you?

A. Yes, sir; I think the controversy has been an injury to the town in general. While I believe the change of the depot under the hill would be a benefit to me, and open markets here, but it would temporarily be a great inconvenience to the railroad company—I am not prepared to say about that, I am not up on that business.

Q. But property values haven't been deteriorated up to this time?

A. No, sir, I think property is worth more now than it ever was. Rents are pretty high, wood and everything.

Q. How about the whiskey?

A. That is pretty cheap.

REBUTTAL EXAMINATION BY MR. FLETCHER.

Q. Mr. Roberson, you spoke about the railroad company being responsible for the bad roads. The railroad company is responsible for having to travel over those bad roads, as you understand it?

A. Yes, sir; going to the depot causes a great deal more travel over that line.

Q. Speaking about the evil effects of this controversy, this controversy is all the railroad's making, as you understand it?

A. Yes, sir, they started the fight by moving the depot.

MR. E. T. WINSTON, a witness introduced and sworn on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. FLETCHER.

Q. You are a citizen of the town of Pontotoc, Mr. Winston?

A. Yes, sir.

Q. How long have you lived here?

A. Why, most of my life, off and on.

Q. Twenty-five years?

A. Thirty-four years.

Q. Were you present at a meeting that was held in the courthouse in the town of Pontotoc sometime in June, 1903. to determine the location of the depot?

A. Yes, sir.

Q. Was, Mr. Merrill, the then president of the M. J. & K. C. Railroad Company present?

A. Yes, sir.

Q. Mr. Carr present?

A. Yes, sir.

Q. What other citizens whose names you recall were present?

A. Why, there were a number of citizens—Mr. Clark, Mr. Brown, Mr. Reuben Brown, Mr. J. F. Brown, Mr. Rowzee.

Q. About how many people were here?

A. Well, I should think there were one hundred and fifty or sixty.

Q. The majority of the men interested in business in the town of Pontotoc?

A. Yes, sir, I should think so.

Q. Did they have a vote to determine whether or not, Mr. Merrill, the President of the Railroad Company, would be permitted to build his depot on the site it now occupies?

A. Yes, sir.

Q. What was the result of that vote?

A. Why I couldn't give the exact figures, but my recollections is that it was twenty-eight, about—well, we will say thirty some odd. I really couldn't say whether it was twenty-seven or thirty seven.

Q. Were you in favor of the site now occupied by the depot?

A. Yes, sir.

Q. Did you take any part in the meetings?

A. I was secretary, my recollection.

Q. Mr. Walker and Mr. Brown, you see?

A. Mr. Walker was present.

Q. Mr. Carr? Thoes gentlemen take any part in the meeting?

A. Well, they made just sort a general talk, you know, nothing very formal about it. Yes, they voted.

Q. You understood, when you finished that, so far as that meeting could determine the question, that it was decidedly that the depot was to be built over there where it now stands.

A. Yes, sir.

Mr. Fletcher, for the complainant, here objected to the foregoing questions as leading.

Q. Do you know anything about the property values in the town of Pontotoc?

A. Yes, sir. I recently bought a place.

Q. Have they decreased or increased in the last two years since that June meeting?

A. I gave seven hunred dollars for a place east of town a little over a quarter of a mile, that cost five hundred a little over a year ago.

Q. Is that in the old town of Pontotoc?

A. Yes, sir, it is—well, I don't know. It seems to me that would be in the new limits. That is a part of this place. But it is in the corporation now.

MR. FLETCHER: It is the extended in corporate limits? It is in the part that was taken in?

A. Yes, sir.

MR. PEGUES: Isn't part of that in the old corporate limits?

MR. FONTAINE: Yes, sir.

Q. Have rentals increased any in the same proportion?

A. I couldn't speak from personal knowledge. I happen to know, though, that there has been an effort in that direction.

Q. Who has been making that effort?

A. Mr. Walker.

Q. Has he succeeded to any extent?

A. No, sir, it was on my brother, and he moved

Q. You could not persuade him to pay the increased rental?

A. No, sir.

Q. You don't think, however, any property has been deteriorated in value, or rentals incrseaed, by the change of the location of the depot?

A. I know my business hasn't decreased.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Has the depot been changed, Mr. Winston, definitely and final?

A. It seems to be, I don't know. I could not tell you.

Q. Isn't it the general sentiment and the general understanding that there is no certainty about where the depot will be?

A. It seems to be that way. They are still lawing over it.

Q. It is still in litigation?

A. Yes, sir, it is still in litigation.

Q. Now, you say the vote was twenty-seven to seven, or thirty-seven, you say, to eight, or something like that?

A. Why, Mr. Fletcher, I don't know. It was my recollection it was either twenty-seven or thirty-seven to eight.

Q. How much notice had been given of that meeting?

A. Mr. Bolton usually gave us our railroad notice here that Mr. Merrill was coming down on a special train to locate the depot.

Q. How long before the meeting was that before the meeting was disseminated?

A. My recollection was that Mr. Merrill got here about twelve o'clock, and notice was given about nine or ten.

Q. About three hours before the meeting notice was given?

A. Yes, sir.

Q. Do you know who it was that notified the people generally?

A. I suppose Mr. Bolton started it, and telephoned around, and he saw a good many; others were interested. Everybody was interested in the railroad business at that time.

Q. That vote of seven is a considerable minority of the voters of Pontotoc?

A. Well, I should think that the whole vote you might consider it a minority vote, but there was a good many voters—now, you might say there were voters now that didn't vote then. There were a good many parties who didn't consider themselves strong enough property holders—myself for one, did not own anything but the printing office, and I didn't take any vote.

Q. There were quite a number present who didn't vote?

A. It seemed to be the sentiment of everybody to let the strongest men handle it, and for the others to lay low.

Q. Did Mr. Walker vote at that meeting?

A. I could not say about that.

Q. He is a very large property owner?

A. I think so.

Q. Did Mr. Latham vote at that meeting?

A. I don't remember.

Q. Mr. R. P. Brown, he is a property owner—he didn't vote, or do you remember about that?

A. My recollection is that Mr. R. P. Brown and Mr. J. P. Brown were both here. There were several of those railroad meetings. I am not positive about any one of them. I remember Mr. A. J. Clark was one man, because he was standing right there where Mr. Mauldin is.

Q. You were present at a certain railroad meeting when Mr. Carr delivered an oration on the subject?

A. Yes, sir.

Q. Don't you remember he said emphatically to Mr. Merrill and to other gentlemen who were there that he would resist with all his power any effort to move the depot?

A. I remember him making remarks to that effect. I don't remember whether it was this meeting that you speak of.

Q. Along about that time?

A. I know that Mr. Carr was making jovial remarks. At Cruse's and I remember an expression of Mr. Carr's that they were going to crucify us.

Q. You understood from Mr. Carr that he was radically opposed to the changing of the depot?

A. He seemed to be at most times. At this meeting that I attended a vote was taken, and then a committee was appointed. Mr. Merrill said that he wanted the right of way secured.

Q. Mr. Winston, excuse me right there—it was a different

meeting that the committee was appointed.

A. No, sir, not according to my recollection.

Q. Who presided over that meeting, Mr. Winston?

A. My recollection is that either Mr. J. H. Salmon or Mr. Franklin presided. I am not positive about that.

Q. Now, did Mr. Merrill make a speech there before that vote was taken?

A. Yes, sir.

Q. Didn't he state, as president, that it would be impossible and that the railroad could not and would not run there, down the old line by the old depot?

A. Yes, sir.

Q. That it was out of the question to talk about it?

A. Mr. Merrill said that it was a trunk line of railroad, and that they would need tracks and things like that, and he said that they had to locate the roundhouse at some point, and he thought probably Pontotoc would get that, and that they had to get plenty of room for it.

Q. And he said that they could not run the line down here?

A. Yes, sir.

Q. And the understanding was when they took this vote that it was either to run over yonder or not get it so near?

A. Yes, sir; that was my understanding of their meeting; and another reason was that they wanted to settle the question, that the town was all torn up over it, and Mr. Merrill came here and nearly everything in town turned up and went over there.

Q. He was talking about putting it over at the Hamp Beckham place?

A. No, sir, not at that time. At that time, he went to the place and he said right here that in order to locate the depot here—

Q. There was some talk of running the railroad three miles west of here?

A. There was another reason; that the people were still very glad that he was coming nearer than they thought, because there was some talk of putting it at the Hamp Beckham place, and some talk about putting it three miles further west.

Q. And the sentiment of the people was to get it as near the town as possible?

A. Yes, sir.

REBUTTAL EXAMINATION BY MR. RICH.

Q. You understood, Mr. Winston, however, from Mr. Merrill, that he was coming here to build a railroad?

A. Yes, sir.

Q. And he wanted to build it as near to the town as possible?

A. Yes, sir.

Q. They found physical difficulties to getting into the old depot, and wanted the people to help him to overcome them?

A. That is what he explained.

Q. And upon that statement, the majority of the people at that meeting agreed to his suggestion?

A. Yes, sir.

SURREBUTTAL EXAMINATION BY MR. FLETCHER.

Q. He said, Mr. Winston, that those difficulties were insurmountable?

A. Why, that was what I inferred—insurmountable from a practical standpoint.

MR. O. J. KNOX, a witness sworn and introduced on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Mr. Knox, you are a citizen of the town of Pontotoc, are you?

A. I am.

Q. What business are you engaged in?

A. Manager of the Pontotoc Cotton Oil Company.

Q. Where is that located?

A. Near the depot.

Q. Why was it located there?

A. It was located there because Mr. Morgan informed me that it was the only place that we could get service on the new line of the railroad, or supposed line of railroad.

Q. Was it located there after these various and sundry meetings had been held here in the summer of 1903?

A. Yes, sir, it was.

Q. Were you at any meetings held in the court house?

A. I was.

Q. A committee of citizens was appointed to procure right

of way over the present route, here, through the county of Pontotoc. Who was on that committee?

A. W. R. Pegues, J. A. Fontaine, O. C. Carr, R. P. Brown, and myself and another member of that committee, I don't remember.

MR. FLETCHER: Jeff Wilson, wasn't he, Mr. Knox?

A. I don't remember that, possibly he was.

MR. RICH: Well, now, did those gentlemen serve?

A. They all did except Mr. Carr—my recollection.

Q. Mr. Wilson and Mr. Brown aided in procuring the right of way for the company over that route?

A. In an official way.

Q. Were they objecting to it very strenuously at that time?

A. That committee, that was not—we had no dissension, my remembrance of it.

Q. They were helping the railroad get the right of way?

A. They were acting on that committee.

Q. Mr. Knox, what do you know of property values in this town, are you familiar with the trend of values in the last two years?

A. Well, my information is that property values have advanced steadily in the last two years. They were worth in the last year more money than they were two years ago.

Q. The general trend of values has been upwards?

A. That was the conclusion that I have formed after knowing some prices that have been paid for property here recently.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Mr. Knox, there has been a general trend upwards of values all over the State of Mississippi, so far as you know?

A. I think so, yes, sir.

Q. I believe you stated that you located your oil mill over there because Mr. Morgan made that statement to you, that you could not get service anywhere else on the line?

A. About the words Mr. Morgan told me, we would not be likely to get service anywhere on the old line.

Q. That was the controlling reason why you put it there?

A. It was.

MR. T. B. WILSON, a witness introduced and sworn on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Mr. Wilson, you are a citizen of Pontotoc?

A. Yes, sir.

Q. How long have you lived here?

A. I have lived here near here all of my life—about sixty-five years.

Q. Were you living here in 1889, when the narrow gauge railroad was being constructed into Pontotoc?

A. Yes, sir. I was living where I am now at present, in the corporate limits of the town. It was not at that time.

Q. Were you a contributor to the fifty-five hundred dollars fund to aid that railroad in getting in here?

A. Yes, sir, I was.

Q. Was there a contract -- you and the other contrbutors—to locate the depot at any particular place?

A. None with me. I don't know as to the other contributors.

Q. So far as you know?

A. No, sir.

Q. Did you ever hear any such thing suggested at that time?

A. No, sir, I don't know—remember that I ever did.

Q. How much did you contribute to that fund?

A. One hundred dollars.

Q. Did you make a note for it and subsequently pay it?

A. No, sir, I just paid it when they called on me for it.

MR. J. D. FONTAINE, a witness sworn and introduced on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. Captain, how long have you lived in Pontotoc?

A. All of my life.

Q. Citizen here now?

A. Yes, sir.

Q. Were you a subscriber on a contributor to the fund of fifty-five hundred dollars to aid in getting the narrow gauge railroad into Pontotoc?

A. I was. I gave two hundred and fifty dollars for it.

Q. Two hundred and fifty dollars?

A. Yes, sir.

Q. Did you have any contract with the authorities of that road to locate its depot at any particular place?

A. None whatever.

Q. In consideration of that contribution?

A. Never heard of it. Never heard of a committee being appointed to make any such trade, and I never was consulted in reference to it.

Q. Only taking an active part at that time in aiding that line to get in here?

A. Yes, sir.

A. Yes, sir, and I subscribed two hundred and fifv dollars, and everybody else that I know of subscribing, did the subscribing to get the road here.

MR. W. C. PITTMAN, a witness sworn on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. RICH.

Q. How long have you lived in Pontotoc?

A. About eight or nine years.

Q. Are you engaged in business here?

A. Yes, sir.

Q. What business?

A. Mercantile business.

Q. Mr. Pittman, did you attend a meeting held in this courthouse sometime in June, 1903?

A. I don't remember the exact date.

Q. I refer to the meeting at which there was a discussion between the railroad authorities and the people of the town of Pontotoc relative to locating the depot?

A. Yes, sir.

Q. What was the purpose of that meeting, as you understood it?

A. The purpose was to get an agreement as to locating the depot. Merrill said he could not or would not go down in the hollow. That was what I heard him say. I heard him say—I heard him make that remark.

Q. Was that made at the meeting?

A. He made it on the street and made it here on this stage too—this platform.

Q. Well, now, was there a vote taken at that meeting, to determine where the depot should be located?

A. Yes, sir.

Q. What was the result of it?

A. There was seven voted against it. I don't remember exactly how many there was voted for it—thirty odd, something like that.

Q. Voted for the present location?

A. Yes, sir.

Q. How many people were at that meeting?

A. Just at a rough guess, I would say seventy-five.

Q. Were a majority of the business men of Pontotoc there?

A. Well, I suppose so; it was a public meeting.

Q. Mr. Carr here?

A. Yes, sir, he was here.

Q. Took part in the meeting?

A. Yes, sir.

Q. Mr. Pittman, are you familiar with property values in the town of Pontotoc?

A. Well, I reckon so. I own some property here.

Q. Well, has the trend of values been up or down in the last two years?

A. It has been upwards.

Q .Do the same conditions apply to rentals?

A. Yes, sir. I could answer the question by relating some actual transfers that have been made. The lots that Mr. Latham owns down there, his warehouse, were sold sometime, several years ago. It was while the depot was down here.

Q. The depot was on the old site. ?

A. To Knox and Boon for six hundred dollars, and Mr. Latham paid eight hundred after the depot was located over yonder.

Q. On the new track?

A. I bought a house down there and paid one thousand dollars for it. I considered it a pretty high price when I bought I could get fifteen hundred for it now.

Q. Who did you buy it from?

A. Griffin & McDonald. Oliver Ray has a house down there; it was pretty tolerably high at eight hundred dollars. It sold recently for a thousand dollars and then for eleven hundred.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Mr. Pittman, at that meeting you say Colonel Merrill said he would not or could not operate his railroad?

A. No.

Q. Mr. Merrill's statement was to eliminate from the minds of the people the idea of establishing the depot at the old site?

A. He said he would not or could not—he would not listen to any kind of a proposition to go into the hollow; that was about the language that he used.

Q. Mr. Pittman, you are on the Board of Alderman, here?

A. Yes, sir.

Q. You remember that there were four thousand dollars borrowed for street improvement?

A. Yes, sir.

Q. How much of that money, approximately, has been now spent?

A. Well, there has been on the whole town, something like twenty-eight hundred dollars.

Q. How much of it has been spent in an effort to improve the roads to the new depot site?

A. Well, sir, I consider that over half of it was spent that way. Something, just to roughly estimate it, something like two thousand dollars, probably. No, well, it may be so. I don't know, of course.

Q. Of course, that is your best judgment about it.

REBUTTAL BY MR. RICH.

Q. Now, Mr. Pittman, how many roads leading to the new depot have been improved?

A. Two.

Q. What is the length of the two roads? The aggregate length?

A. Why, I suppose—

Q. A mile and a half?

A. Well, no, sir. I suppose it is about a half a mile. Maybe it is a mile and a half.

Q. The two roads I mean?

A. Yes, sir, close to it.

Q. Under whose supervision was that work done?

A. That was done under the supervision of the town authorities.

Q. Did you have an engineer?

A. No, sir.

Q. Have any road builder?

A. No, sir, nothing; no man with any particular experience.

Q. Skill?

A. No, sir.

Q. Haven't you spent some of that money in improving another road out this way?

A. Yes, sir. We have spent money all over the town. Most of it has been spent on those two streets.

Q. Well, what was the reason that you didn't get better results—was it due to bad weather, in improving the roads?

A. Well, of course, it made some difference. There was no one skilled at the business.

TESTIMONY OF C. L. HARRIS.

State of Mississippi, et al.,

vs.

Mobile, Jackson & Kansas City Railroad Company, et al.

Deposition of C. L. HARRIS taken in the City of Memphis, on this the 20th day of January, 1906, by consent of parties, it being agreed that the transcribed notes taken by the stenographer shall be read in evidence on the trial of this cause in the Chancery Court of Pontotoc County, State of Mississippi. Objections to irrelevancy, materiality and competency to be offered at the hearing:

Questioned by R. V. FLETCHER, Attorney for Plaintiff:

QUESTION 1. Your name is C. L. Harris, is it not?

ANSWER. Yes, sir.

Q. 2. Where do you live?

A. I live in Memphis, Tennessee.

Q. 3. How long have you lived here?

A. About five years.

Q. 4. Where was your former residence?

A. Ripley, Miss.

Q. 5. What business were you engaged in before you came to Memphis, Mr. Harris?

A. I was for twenty-one years in the railroad business.

Q. 6. With what railroad were you connected?

A. It was called the Gulf & Chicago at that time.

Q. 7. Is that the narrow gauge leading from Middleton to Pontotoc?

A. Yes, sir.

Q. 8. In what capacity were you engaged with the railroad during this twenty-one years?

A. I was superintendent.

Q. 9. Do you remember the time when this narrow gauge railroad was constructed to Pontotoc?

A. Yes, sir.

Q. 10. What connection did you have with the railroad at that time?

A. I held the position of Superintendent.

Q. 11. Did you have any stock in the railroad then?

A. Yes, sir.

Q. 12. Who was president of the railroad at the time it was constructed into Pontotoc?

A. W. C. Falkner.

Q. 13. If you know anything of an agreement or contract with the citizens of the town of Pontotoc and the narrow gauge

railroad company with reference to the assessment of money for any purpose connected with the location of the railroad or depot, please state in your words full as to what you know in regard to the same?

A. The citizens of Pontotoc contributed certain money about $5,000 or $6,000 is my recollection, towards building the railroad into that town or locating the depot in the town.

Q. 14. I just want you to go ahead and tell all you know about the payment of the money.

A. The money was paid to the company; the road was built into the town and a certain lot selected for the depot.

Q. 15. Is that where the depot was located and built?

A. It was. After the selection by Col. Falkner and some of the citizens of the town, I went down there and thought I could select a better place on the same line, however, and had it changed.

Q. 16. With whom did you negotiate, if you remember, in regard to the payment of this money and the selection and location of the depot?

A. I don't remember who paid that money. Mr. Bell had a good deal to do with it; Charley Mitchell and old man Bell, Mr. Carr and Mr. Reuben Brown.

Q. 17. That first site that you speak of, you say was on the same line?

A. Yes, sir, it was just a little north of where the depot was built, about 100 feet.

Q. 18. Do you know exactly what the $5,000 or $6,000 was paid for? What was the consideration for the payment of that sum of money?

A. The consideration was to get the railroad built into that town.

Q. 19. Had there been any discussion to as locating the line in a different place from the one where it was finally located?

A. Any discussion; well there was some little discussion, I first wanted the depot built up at Morphis crossing; you know where that is, about where the two lines divert. If it had been satisfactory with the people of Pontotoc, we would have built the depot up there; but Col. Falkner said they would not agree to it, and requested us to run the road down into the town.

Q. 20. Do you know why the amount was fixed at $5,000 or $6,000, whatever it was?

A. No, sir. I don't know why it was fixed just at that amount.

Q. 21. State whether or not the payment of the $5,000 or $6,000 was conditioned upon the location of the depot at any particular place?

A. The condition was that the depot should be built near the center of the town, as it was built finally.

Q. 22. Was there or not any agreement between the railroad company and citizens finally, as to the location of the depot?

A. Yes, sir, there was an agreement. They allowed us to build in one of the streets. That, of course, had to be by agreement of the city authorities.

Q. 23. Do you know whether there had been any surveys made south of the place where the depot was located with the view of extending the line further south?

A. Yes, sir, I know there was a survey a few miles south, I don't know exactly how far.

Q. 24. Do you know whether the route south from where the depot was located was considered a practical and feasible route?

A. It was. It was so considered by the Engineer. I couldn't say so on my own information, not being an engineer.

Q. 25. Do you remember the name of the Engineer that made the survey?

A. Col. Powers.

Q. 26. Was he not an engineer of repute in his profession?

A. Yes, sir, I was considered to be a reputable and competent engineer.

CROSS-EXAMINATION.

Q. 1. When was this agreement made, with the citizens of Pontotoc about the construction of the line into the town

A. I don't know, that I can give you exact year.

A. As near as you can.

A. It was when we commenced to extend the road from Ripley.

Q. 3. That was about 1885 or 1886, was it not?

A. Yes, sir.

Q. 4. What was the name of the corporation that owned the railroad property at that time?

A. The road was under the name of the Gulf & Ship Island, the little road from Ripley to Middleton was known as the Ship Island, Ripley and Kentucky.

Q. 5. Who were the executive officers of these two corporations?

A. Col. Falkner was the President of the Ship Island, Ripley, and Kentucky. I don't know whether he was president or not of the company, but he was its chief officer. Superintendent was the title given me. I had charge of the work and handling of funds generally.

Q. 6. These corporations each had its Board of Directors, of course?

A. Yes, sir.

Q. 7. With whom was this agreement made that resulted in the payment of between $5,000 and $6,000?

A. It was made with Col. Falkner.

Q. 8. Were you present when it was made?

A. No, I was not present.

Q. 9. Then as a matter of fact, Mr. Harris, you have no personal knowledge of any agreement made?

A. Well, I know from the books and Mr. Falkner's statements.

Q. 10. I mean from your own knowledge. Just answer my question and then you can explain all you like. Have you any personal knowledge of any agreement made with Col. W. C. Falkner, or any other official of this railroad for the consideration of running the line into the town of Pontotoc?

A. I understand from personal knowledge, was I present at the making of the contract?

Q. 11. Of course.

A. No, I was not present.

Q. 12. And you have no personal knowledge of anything of that kind?

A. No, I was not present. I have seen the subscription list and Mr. Falkner talked over the situation with me.

Q. 13. You have seen any more than a subscription list wherein it was agreed that certain citizens signing this list did so for the purpose of directing this line into the town of Pontotoc?

A. Well, Pontotoc people have also told me.

Q. 14. You say you have never seen anything else?

A. I have other knowledge; I have Col. Falkner's statement for it; I know the expenditure of the money.

Q. 15. Mr. Stenographer, read him the question. Q. 13 read, viz.: "You have never seen any more than a subscription list wherein it was agreed that certain citizens signing this list did so for the purpose of directing this line into the town of Pontotoc."

Now, Mr. Harris, this is all the agreement you have seen?

A. Yes, sir.

Q. 16. In that agreement, was there any specific location named for the depot?

A. I think not. I don't remember that there was any place named in that agreement.

Q. 17. This subscription, or rather this contribution was made for the purpose of procuring a line into the town of Pontotoc?

A. Yes, sir.

Q. 18. Now, Mr. Harris, don't you think at the time the depot was located, and don't you think now, it was an unwise and impracticable location with the view of constructing the road south of Pontotoc?

A. Well, I thought at the time that the people of Pontotoc—

Q. 19. Wait just one minute. I mean this: If you had been building the road into Pontotoc with the view of running it south of there, don't you think this location unwise and impracticable?

A. I thought at that time it was impracticable, and whether it was or not, that it would be better to have the depot out on that level about a mile from town.

Q. 20. That was because if you extended the road from the side of the depot you would have to cut down a long hill?

A. Yes, sir, and for the further reason it would have saved us the expense of building down into the town over a half mile.

Q. 21. These people who have made subscriptions on the basis you have mentioned, afterwards made deeds for right of way, did they not, in satisfaction of these subscriptions?

A. Yes, sir.

Q. 22. Those deeds as a matter of fact showed the agreement between those officers and the citizens, reciting that it was for the purpose of getting the road into the town of Pontotoc?

A. Yes, sir.

Q. 23. Did you have at any time since the construction of that depot a conversation with John W. T. Falkner, a son of W. C. Falkner, about the location of that depot?

A. I think I have probably.

Q. 24. Did you not tell J. W. T. Falkner, in Pontotoc, shortly after the death of W. C. Falkner, and that Mr. Wm. Bell had kept old man Brown, the engineer, at his home until he located the railroad where it was finally located?

A. I don't remember anything of that kind.

Q. 25. As a matter of fact, Mr. Harris, was not that depot located against your better judgment at that time?

A. As I have stated, I thought it would have been much better for the road to have built its depot back a half a mile from where it is located.

Q. 26. And that was because of the physical obstructions that were to be overcome?

A. Yes, sir.

Q. 27. Did you ever say to Mr. J. W. T. Falkner that the Engineer had been bribed into locating the depot at that place?

A. No, sir, I don't remember anything of the kind.

Q. 28. Was he not discharged for locating the depot there?

A. I don't remember that.

Q. 29. Was he not discharged about that time?

A. Yes, sir, about that time.

Q. 30. Do you know for what reason?

A. My understanding was, because we were done with him; we had completed the survey and did not need him any longer.

Q. 31. Do you know why the railroad was not extended south of Pontotoc?

A. Well, I don't know that I could say. I don't know why.

Q. 32. Have you been in Pontotoc since the Gulf & Chicago Railroad has constructed its line from the town of Decatur into Pontotoc?

A. No, sir, I have not.

REDIRECT EXAMINATION.

Q. 1. Do you know about where the new depot is located from personal knowledge or from report?

A. From report I know pretty well, but I have never seen it; but I understand it is about a half a mile west of the old depot.

Q. 2. Taking into consideration the interests of the railroad and the interests of the citizens, business men and property owners of the town of Pontotoc, do you consider the new location preferable to the old?

A. You want me to take into consideration the interest of the railroad and the interest of the people of Pontotoc?

Q. 3. Yes.

A. Well, they clash there. There is two different answers, of course, it is to the interest of the railroad to build where the new line is, and to the interest of the people of Pontotoc to build where the old was.

Q. 4. Those deeds were given in addition to the amount of money paid, were they not?

A. My recollection is that the right of way was given in addition to the subscription.

Q. 5. Did the railroad company pay anything for the right of way into the corporation of the town of Pontotoc?

A. I think not.

Q. 6. I believe that you stated that the consideration of the payment of the money was the location of the depot as near the center of the town as it was finally located?

A. Yes, sir, that was my understanding. It was so considered by Col. Falkner and myself.

Q. 7. Do you know the estimated difference of the cost of the line which was discussed running west of Pontotoc and the line which was adopted?

A. No, I do not.

And further deponent sayeth not.

C. L. HARRIS.

Subscribed and sworn to before me this 23rd day of January, 1906.

H. D. HUGHEY, Notary Public.

Filed, January 31st, 1906.

W. T. FURR, Clerk.

Deposition of F. B. Merrill.

State of Mississippi

vs.

Mobile, Jackson & Kansas City Railroad Company, et al.

It is agreed by and between the solicitors for the plaintiff and the defendant in the above stated cause, that the depositions of F. B. Merrill, a witness for the defendant, may be taken before Ellen H. Smith, a Notary Public for Mobile County, Alabama; such depositions shall be read on the trial of said cause without objection by either party except as to the competency, relevancy or materiality of the evidence. Such objections, if any, may be presented as to the time of the trial of said cause.

WILLIAM WILLIAMS, Attorney General,
MITCHELL & FLETCHER, of Counsel,
Solicitors for the Complainant.

McINTOSH & RICH,
FONTAINE & FONTAINE,
J. W. T. FALKNER,
Solicitors for the Defendant.

MR. F. B. MERRILL, a witness introduced on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. J. C. RICH.

QUESTION. Col. Merrill, what is your former connection with the Mobile, Jackson & Kansas City Railroad Company?

A. President and General Manager.

Q. Were you President and General manager during 1902 and 1903?

A. Yes, sir, I resigned in July, 1903.

Q. Were you president of the Mobile, Jackson & Kansas City Railroad Company when the owners of that property purchased the narrow gauge railroad running from Pondotoc to Middleton, Tennessee?

A. I was.

Q. Did you negotiate that purchase?

A. I did.

Q. Before purchasing the narrow gauge property, did you make, or have made by surveyors and engineers, any examination of the situation at Pontotoc?

A. No, I did it myself, personally, before I purchased it. I made it personally.

Q. Well, with what view did you make that examination—with what intention?

A. The view I had was to see if it was feasible to utilize that road in building the Mobile, Jackson & Kansas City Railroad north.

Q. And what condition did you find existing there?

A. Well, I went over the line with Mr. Davis, who was Superintendent, Captain Jack Fontaine and two or three other gentlemen, I forget their names, and in looking over the situation at the depot at that time down in the hollow, I asked them what, in their opinion would be the feeling or attitude of the people there if the railroad was purchased in the interest of the Mobile, Jackson & Kansas City and could be completed through to the south, as to abandoning the present Gulf & Chicago at a point they called the spoke yard, the head of that.

Q. The stave yard?

A. The stave yard. They told me that they would acquiesce in anything that was reasonable in order to have a railroad built through to Mobile, or have the railroad from Mobile built through to Pontotoc, and relying upon the judgment of the gentlemen there was one of the incentives and one of the reasons that I purchased the Gulf & Chicago Railroad in the interest of the Mobile, Jackson & Kansas City Railroad.

Q. Now, Colonel, was there any reason why that depot should not have been allowed to pass down under the hollow?

A. All things are possible, but sometimes very impracticable. It was down at the lowest possible place in that section of the country, and the way railroads are operated and the grade I had established on the Mobile, Jackson & Kansas City was one per cent. and in order to hold that as a maximum grade to govern your loads, it was thoroughly impracticable to get down into that hollow and come out either from the north or the south you will have to break your trains and have a pusher

and I explained that at the time.

Q. Now, were you building a new railroad from Decatur, Miss., to Middleton or Jackson, Tenn., or were you undertaking to extend the narrow gauge road south?

A. O, a new railroad. The narrow gauge was only to utilize that portion of the track which was filled in. That was the tail of the dog—the dog was the new road from Decatur north.

Q. Now, as a matter of fact, were you abandoning any part of the narrow gauge line, or were simply proposing to rearrange or relocate the tracks in the town of Pontotoc, so as to make it feasible and practicable from a railroad standpoint?

A. We didn't abandon that portion of the Gulf & Chicago from the stave yard to the depot; but there was certain other places in the Gulf and Chicago which we have abandoned on account of the impracticability of the grades.

Q. Well, as a matter of fact, you were simply changing the location of the tracks—that was it? Your purpose was not to build a railroad through the town of Pontotoc?

A. Most assuredly.

Q. From Mobile to Middleton or Jackson, Tenn.?

A. Yes, sir, not only through the town but as a policy which we should always pursue in building a railroad as near the business center of the town as practicable.

Q. Well, now, Colonel, after you had agreed upon their terms of the purchase of the narrow gauge property, did you have any surveys made by engineers?

A. At least a half dozen.

Q. Well, now what was your purpose in having so many surveys made?

A. To get the nearest practicable route to the business centers of the town.

Q. Were the people of Pontotoc, or not, familiar with the fact that you were making these surveys?

A. They were familiar, very familiar with it, because I consulted with them.

Q. As a matter of fact, were they not aiding you in making them?

A. They were. They rendered me every assistance.

Q. Did you at any time in June, 1903, have a meeting

with the people of Pontotoc in the courthouse, at which the question of the location of the depot was discussed and a vote taken upon it?

A. Yes, sir, the latter part of the month. One day we held two meetings there. One meeting out west of town on the Toccopola road, and I had with me profile blue prints of three different routes which had been surveyed near the village. All the routes were examined by those present, and we finally chose a point which was about a mile from the postoffice. It was not the route nearest the town which our engineers had suggested, but the next nearest, and after deliberating and talking over the situation for at least an hour, we then adjourned to the court house, and there the meeting was held and the subject discussed, and after a discussion a vote was taken, and I remember of counting the people present—not including the boys—and there were over eighty, and over seventy voted to accept the location which we had decided upon earlier, and the meeting also appointed a committee to assist the railroad company in getting the grounds for the freight yards, the depot and rights of way to and from it. If my memory serves me right, there were only two who really voted against the location, but there were three or four who didn't vote at all. I left Pontotoc that afternoon and supposed that everything was settled and settled amicably.

Q. Well, now, Colonel, you say the vote was taken approving the location of the depot as you had made it?

A. Yes, sir.

Q. Is that the location upon which the depot is now erected?

A. I presume it is—I understand it is. Haven't been there since that time, but I issued instructions that very day for the engineers to go on and connect up with that road and left them on the ground to perform that survey.

Q. Well, you then proceeded, as directed counsel to proceed to apply to the Railroad Commission for a consolidation of these properties did you not?

A. I did.

Q. Was that done with the understanding that this Pontotoc matter had been settled and the depot location agreed upon.

A. Most assuredly—In fact I never would have recommended the purchase of the Gulf & Chiago Railroad Company had I not believed that the depot could not have been moved to some point on higher ground west of the old location?

Q. Did you ever threaten the people of Pontotoc, or make any statement at those meetings, that unless they agreed to the location for the depot that you had selected you would build a railroad five miles out of town.

A. I have no recollection of making any threats at any time. My whole effort was to have the people join with me

in getting that which was best for the town of Pontotoc and the railroad.

Q. Were any statements made at that meeting, or at any time, so far as you know, pending your negotiations with the people of the town of Pontotoc for the location of the depot, to the effect that they had written an agreementwith the former owners of the narrow gauge property for the location of the depot at any particular places?

A. Well, Mr. Carr said he and Mr. Black, the Postmaster—

Q. Mr. Bell?

A. Mr. Bell, intimating that Mr. Bell had some sort of an understanding with one of the projectors of the old Gulf & Chicago Railroad Company. I don't remember what his name was.

Q. Colonel, how long have you been connected in any way with railroading construction or operation of railroads?

A. What do you mean? How long have I been connected with railroads, first and last?

Q. Yes, sir.

A. About thirty-five years.

Q. Would it not have involved a large outlay of money to have constructed that line north from Decatur through the old narrow gauge depot site—a large addition of it?

A. I will tell you it is impossible, but thoroughly impracticable.

Q. Would it have involved any change of the general scheme of grades?

A. As I explained to the people present at that meeting if we were to go through the old depot site, in order to maintain our maximum grade it would have required a fill there of a number of feet—fifteen or twenty feet. It was thoroughly impossible or impracticable to have built the depot there. I also explained to them that the railroading of today had resolved itself to a science, that the maximum governed a train load, and if you had only a quarter of a mile of a one and a half per cent. grade, and the balance of the road was only one per cent., your maximum grade was only one per cent.; that half mile of road would govern your entire system with regard to the loads, unless you break your loads up or provide an extra engine to help your trains over that little piece of extra grade, and that would have been the condition at Pontotoc if the depot had been located anywhere on the grade level down in the hollow—there where the old Gulf & Chicago depot was located.

Q. Would it not have lengthened the line to have built through the old depot site?

A. I don't think there was any material difference between the old route and the route we decided on, if my memory serves me right, it was about six hundred feet difference, and I

believe that the route that was selected was about six hundred feet longer than the old route.

Q. You made no measurement of it?

A. I guess the engineers figured it out.

Q. Very considerably longer?

A. Over the new route?

Q. Over the new route.

A. Yes, sir, I knew it was somewhat longer, but my impression was very flaggering.

Q. Do you know the cost of operating a train per mile approximately?

A. Of course conditions govern that. Some are three mills per ton mile, others over a cent.

Q. I am talking about the train mile—the entire train?

A. I can't give you that offhand.

Q. Would it be as much as $1.25 or more?

A. I don't think you could operate it for $1.25 per mile, not in this country.

Q. Do you think perhaps it would be more than that?

A. I do. I am speaking of present conditions.

Q. The new line that you were then operating in July runs from Pontotoc, Miss., to Middleton, Tenn.?

A. This was in June.

Q. Yes, in June—that was then being operated?

A. Yes, sir.

Q. And after you took it over it was operated?

A. Yes, sir.

Q. Across the Tennessee line. You were handling freight and passengers interstate?

A. We were.

CROSS-EXAMINATION BY MR. FLETCHER.

Q. Now, Colonel, when you had this conversation with Captain Fontaine and two other citizens, before you took over the property of the Gulf & Chicago Railroad, do you recollect who the other two citizens were?

A. Well, Captain Fontaine, and there was a man there he was getting out—I think he was a carpenter or something. I know they were hauling some boards and scantlings from some little mill that was out in the country. He was one of them, and the other gentleman was a man who had come down there to the depot after some train. They were the only three men there that day. This was in 1902 that I first went there to go over the road.

Q. This was before you purchased the Gulf & Chicago?

A. O, yes, my investigation of the road.

Q. Captain Fontaine was at that time and is yet the local attorney for the railroad, isn't he?

A. I don't know that he was in any way connected with

the old Gulf & Chicago or not.

Q. Before you purchased the property you didn't consult any of the citizens of the town except the three that you mentioned?

A. That is all.

Q. No public meetings were held before you purchased the property?

A. No, sir.

Q. Now, when you say that it is impracticable to get into the town by the old depot route, what do you mean by that Colonel Merrill?

A. I established one per cent. as the maximum grade of the Mobile, Jackson & Kansas City, and four degrees as a maximum curve; while the old Gulf & Chicago had no data in their office showing their curvature or grades, I was sure, in my own mind, by sighting from the depot north up the track, that that grade up through the cut there was more than two per cent., and I went down just a little below where the depot was along the valley with Captain Jack and Mr. Davis, and I felt sure that I could not get back upon the natural level of the country without an excess of over one per cent., whereas when we went up to the stave yard we stopped the train and walked out and I could see that the country held its level more to be west of the old road down through the cut there.

Q. Did you at any time while you were connected with the railroad, have a survey made with a view of getting a route south from the old depot?

A. Right straight through?

Q. Yes, sir.

A. That was the first survey I had made.

Q. Did that survey follow the old track to its southern terminus and then continue south?

A. Yes, sir, right down that valley and along the track across under the railroad track at the depot.

Q. Now, this survey that was made, were your engineers directed to make a survey over the routes selected by you, or were they simply given authority to find the best and most practicable route?

A. My instructions were these: First, to extend the old road, to resurvey and get the grade from the stave yard, because that was the natural level of the country, through to the south, and then tie up with a line of which we had taken a preliminary. Then if that was found impracticable, to make as many surveys as was necessary until they found a route that was practicable, and that could hold the maximum grade down to one per cent.

Q. Did they find a route by which they could hold the maximum grade down to one per cent.?

A. They found several west of there. There was not less than half a dozen preliminaries run from the old Gulf & Chicago to tie up with our main line which comes up from Houston.

Q. Was there a route found by the old depot which would reach the conditions you mentioned?

A. No, sir, not as reported to me.

Q. Now, do you mean to say, Colonel, that it would be impossible to locate a route running by the old depot which would have no greater grade than one per cent. and no greater curvature than four degrees?

A. Not unless you put down an embankment there that would raise the track a number of feet above the level of the ground, so that it would be impracticable to build a depot there.

Q. Then by the expenditure of enough money to raise the grade mentioned, you could get a track which would meet your requirements?

A. O, yes, it is possible, but to my mind it is thoroughly impracticable.

Q. This survey that you made by the old depot —was that made before or after you had located your line permanently?

A. They were there several months prior to the final location.

Q. Are you able to say now what would be the estimated cost of raising a grade by the old depot so as to make it co-form to your requirements?

A. I am not, no. I can't remember the figures. It was all figured out, though.

Q. Now, Colonel, you say what is the distance approximately from the stave yard where the old line diverges from the new line, to the old depot site?

A. I would say about one and a half miles.

Q. Then the route which you adopted, contemplated abandoning from a mile to a mile and a half of the old narrow gauge line, did it?

A. Yes, sir.

Q. Isn't it a fact and don't you know as a practical railroad man, that the nearer you get to the center of population with a depot, the better it is for the town under ordinary conditions?

A. In the majority of cases, yes sir, but that doesn't always govern.

Q. Are you familiar with the character of the ground between the place where the depot is now located, and the court house in the town of Pontotoc?

A. Yes, sir.

Q. Describe that, Colonel, if you please?

A. Well, from the courthouse up the main street to the church there where it turns to go west on the Toccopola road, it is level. Then you descend down to the creek bed that runs

by the old railroad, and then there is another dip—and then at the top of that rise beyond the second dip is where we located the depot. My suggestion was that we fill in from about the front of Dr. Mitchell's house, and have it, say across the old railroad, and hit the rise on the other side, and then cut down that rise, and that would make a good easy graded highway from the depot to the center of the town.

Q. What did you tell us it would cost the town of Pontotoc to put that road in good condition?

A. My remembrance is that I estimated at that time it would cost about $15,000 from Dr. Mitchell's house over to that rise, and I said that the railroad company would join and aid very materially in that expense.

Q. Now, this proposition of yours is to aid in constructing this road—was that ever made in writing or in any tangible or definite form, Colonel?

A. No, only we talked that over at the meeting and on the ground.

Q. Well, now, do you remember a proposed depot location known as the Hamp Beckham place—by that name—I am not sure that you recall it by that name.

A. No.

Q. Further west than where the depot was?

A. The first location that I talked about?

Q. Yes.

A. Oh, yes, I remember that.

Q. Now, that would have been the route the railroad would have selected, if everything else had been—

A. That was the most feasible route; but after my engineers reported to me and showed me a profile and I went on the ground, it was too far away.—in other words, the route selected was more expensve but the railroad was justified in making that expense in order to get so much nearer the town.

Q. That was in recognition of the fact that the nearer you are to the town the better it is for the town?

A. Nearer in that case, yes, sir.

Q. Now, Colonel, in the vote that you speak of, where the vote was taken and resulted in favor of the proposition to put the depot where it was located, isn't it a fact that you stated to that meeting that it was impossible, impracticable, to locate the depot at the old site, and that you had just as well eliminate that from the consideration, and isn't it a fact that a vote was taken as between the location where it was placed and the more westerly location at the Hamp Beckham place?

A. I didn't so understand it. I understood that the gentlemen present realized that it was thoroughly improcticable to locate on the old location, and that they recognized that I was honest and sincere in my efforts to secure the best location

for the town that was practicable for the railroad. That was the way I construed their feelings, and I was never used better in my life than by the gentlemen present, and their apparent willingness to co-operate with me in everything that was right was evident. We were trying to solve the problem, and we thought that we were nearer the best solution.

Q. How many of those public meetings did you attend, Colonel?

A. Two.

Q. This was the latter one of the two?

A. Yes, sir.

Q. At the first meeting don't you recall that the overwhelming sentiment of the citizens present was in favor of keeping the depot on the old location?

A. If possible and practicable.

Q. Do you remember that Mr. O. C. Carr made a speech there on that occasion?

A. I do, and I also remember that I promised that we would have surveys made and submit them at the last meeting, and if you remember, I had blue prints. We had a gentleman holding them out there, so that we could see. and I explained the topography of the country to them, and it was my earnest desire and wish, if possible, to get down there to the old location.

Q. Don't you remember that Mr. Carr stated there in that first meeting in which he made a public talk, that he himself was a property owner, and represented other property owners and that they would resist to the very end any effort of the railroad company to locate the depot anywhere else than the old site, and that they had a contract with the original owners of the old narrow gauge line, based upon the consideration of the payment of $5500, and that they had proposed to enforce that right and use all machinery of the courts to do so?

A. I don't remember any such remark. If it was made it has passed my recollection. I remember Mr. Carr stating that he appeared for himself and others, and after the meeting Mr. Carr told me, in walking down towards the hotel, that he wanted me to understand that, personally, he was friendly and wanted the road to come through there, but he represented Mr. Bell, as counsel, and, therefore, he had to take the stand he did; but I don't remember of his making any statement that they would fight to the bitter end, or anything like that. If it was made, it has passed my recollection.

Q. Don't you recall that Mr. Carr had something to say about great corporations?

A. Well, I don't remember that.

Q. I am trying to refresh your memory now, and that they would come into the town and ignore the wishes of the people

and destroy the business interest of the town, and the town wouldn't submit to it—something to that effect?

A. Well, I was much amused, if anything, at several of his remarks, Mr. Fletcher, and I must acknowledge I don't remember some of the statements which he might have made.

Q. Now, this appointment of a committee to secure the right of way, was that at the same time—at the same meeting where the vote was taken to which you referred in your direct examination?

A. That was done at the last meeting. Now, remember the first meeting they were going to assist us in getting the right of way south through the county. At the last meeting they were really appointed, and they were going to assist—what is that man's name up there—Warren—they were going to see if they couldn't get bonus from him for part of it and others up north of the railroad.

Q. Isn't it a fact that you stated emphatically upon every occasion when you were called on to make the statement, that it was impossible to locate the depot at the old site?

A. I didn't say impossible. I might have said impractical

Q. Don't you think that theo verwhelming sentiment of the people of the town of Pontotoc at that time would have been to have the depot at the old site if it were practicable?

A. Yes, sir.

Q. And don't you know that it would be much better for the business interest of the town to put it at the old site, if it were practicable?

A. If practicable, most assuredly. I never retraced my opinion as to that.

Q. Now?

A. And further than that, it was decidedly for the railroad company's interest, because they would have had the benefit of so much mileage that they could have utilized on the old road there if practicable. There is no argument ever been brought up against that proposition, to my knowledge.

Q. Do you remember,Colonel, any statement ever being made by you, or by anybody connected with the road, in your presence, with reference to running the railroad three mile west of town, unless you could secure the consent of the pop s to abandon the old depot site.

A. I wouldn't be positive, but it might be possible that I might have said personally that before the Railroad company could build and operate through by the old depot site, it would be far better for them to go further west and keep on the high ground, but I don't remember—I know I never made any threats, because the discussion there was in the nature of a discussion to solve the situation.

Q. I remember, and say that in justice to you, Colonel,

that your attitude was never that of a threatening attitude at all.

A. No.

Q. But you are, of course, familiar with the provisions of the Mississippi Constitution, that if you go within three miles of a town, you will have to go through the county seat?

A. Yes, sir.

Q. Now, you recall at that first meeting, the statement was made by Mr. Carr, or somebody, that there was a written agreement in reference to the location of the depot, with the owners of the old line, do you, Colonel?

A. I don't, Mr. Fletcher. Really it has passed my memory. I presume it is so, but it has passed my memory.

Q. Who was your locating engineer at that time?

A. Our locating engineer at that time was Dancy.

Q. And who was your chief engineer?

A. Jones.

Q. Mr. Jones personally had charge of that situation at Pontotoc?

A. No, Mr. Dancy was in there first. Of course he was under Mr. Jones.

Q. Mr. Jones is a competent engineer?

A. I consider him so. I will say, Mr. Fletcher, here, that I went over the route in a wagon from Newton to Pontotoc before the engineers ever went in there—simply took the State map and rode and walked trying to find the river valleys with my engineer to instruct him as to the general trend of the location. Then Mr. Dancy (who was not the locating engineer, but the assistant engineer) followed that out, and in surveying that distance of one hundred and seventy miles, if my memory serves me right, from Newton to Pontotoc, he ran a line not less than fifty miles; he would run a line and find out he was hitting bad ground, and after he had put his different lines which were feasible and practicable on paper, I then rode myself from Newton to Pontotoc and located. I used to do all that myself —it is generally done by the railroad.

Q. Now, Colonel, you know the principle of law is stated very generally that in locating depots you should consider the interest of the railroad company. Have you followed that principal, in locating your depot at Pontotoc?

A. I did most assuredly. I don't know whether that is

law, but I know it is good railroading.

Q. Now, if the railroad company, by the expenditure of approximately $20,000, could have run the line by the old depot and made as good a line as the present line, and it would cost the town of Pontotoc approximately $15,000 to put their highway in good condition from the town to the depot, would you say then that the depot had been located with due reference to the rights of the people of the town and the railroad company?

A. I will say this—I will answer your question in this way, in other words: If the railroad company could have been through Pontotoc to tie up with the Gulf & Chicago at its terminus right there by the old depot, although the depot would have to have been removed a trifle either north or south, to have gotten it on ground where some grade was found better for the railroad company, I should have decided, if that could have been done for $25,000, perhaps more, I should have chosen to have gone through the old road, although the depot should have had to have been moved either north or south; but I couldn't see my way clear, and my engineers couldn't find a route that would allow me to go in there under hardly any circumstances without a very high fill there and a large expenditure of money.

Q. Then you say, if I understand you, that if the railroad company could have spent $25,000 more to go by the old road than it would have cost to go by the route you had chosen you would have advised the construction of the line along by the old depot?

A. I would.

Q. Why, Colonel Merrill?

A. For the reason that I believed the situation of Pontotoc —it is a very uneven country along west of the village there, and if it could have gotten a depot location at some point which would probably be north of the old site, it would have been more accessible to the business part of the town.

Q. Don't you think that the location of the depot at the new site will inevitably result in the material depreciation of property in the established town of Pontotoc?

A. No, sir.

Q. Don't you believe that the cost of transporting merchandise from the new depot would be greatly increased over what it would cost at the old depot?

A. No, sir, it would be decreased.

Q. Have you ever traveled from the new depot to the town of Pontotoc in bad weather?

A. No, but I have traveled up that hill from the old depot. A pair of horses could pull with the grade as I suggested three times the load from the new depot as from the old location. I never could understand why it was that the depot was located down in that sink hole. I would have thought they would have located the depot in that first place just before you get into that cut, because there is a road went into the village there right on a level with it—that is the logical location for a depot on that old track.

Q. Now, do I understand you to say that, by moving the depot north or south a little, and keeping it on the old line, as we call it, that there might be secured a much better location for a depot than where it is?

A. I think so.

Q. One that would be on a level with the grade of the railroad?

A. Pretty near on the level. That is what I wanted to look after. I studied that situation, and I never could understand why that depot was located down under that hill—never could get it through my head. Of course I had reasons given me, but that doesn't cut any ice here.

REBUTTAL EXAMINATION BY MR. RICH.

Q. Colonel, I understand you to say that this meeting at which the vote was taken approving the location of the depot upon its present site, was one called by you with a view of discussing the situation and involving what was best for the town and the railroad company?

A. It was called at my suggestion,

Q. Mr. Franklin was then Mayor of Pontotoc?

A. Yes. sir.

Q. And presided at the meeting?

A. Yes, sir, he presided at the first meeting, and my correspondence was with him, as I recognized him as chairman of the movement there.

Q. Now, you say that a committee was appointed to aid you in securing a right of way through the town and county at this meeting.

A. I think so.

Q. How was that committee selected?

A. I don't remember whether they were selected there in my presence or not, but that was the intention, as I understand it—that they were to assist us in getting in there.

Q. This committee was selected by the people of Pontotoc?

A. Yes, sir; I didn't have anything th do with it. I don't know that I ever knew of their appointment.

Filed February 21, 1906.

W. T. FURR, Clerk.

TESTIMONY OF N. W. BRADFORD.

IN THE CHANCERY COURT OF PONTNTOC COUNTY, MISSISSIPPI:

The deposition of N. W. Bradford, witness for the defendant railroad company, taken by consent of counsel, all formalities being waived and exception reserved only to the materiality, competency and relevancy of said testimony.

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Attorney for Complainant.

GEO. W. MAY,

Attorney for Defendant.

The State of Mississippi, et al.,

vs.

M. J. & K. C. Railroad Company, et al.

Q. State as accurately as you now remember, when and by what company the railroad now leading or running into Pontotoc, Mississippi, was constructed and what inducements were offered to the company constructing said railroad, by the citizens of Pontotoc, if any, and give the history of the transaction, c2ntracts or agreements between the citizens of Pontotoc and the railroad company, affecting the construction of said railroad into the said town.

A. As nearly as I can remember, the road was commenced some time during the year 1888 and 1889, under the name of the Gulf & Chicago Railroad Company. The first agreement between

the committee of the citizens of the town of Pontotoc—consisting of myself, James W. Bell, and Col. W. C. Falkner, President of the railroad company, was a verbal agreement entered into in Colonel' Falkners office in the town of Ripley, Mississippi, Colonel Falkner agreeing that if the citizens of the town of Pontotoc would guarantee to him the sum of $5000 on completion of the railroad to the town of Pontotoc, he would build or extend the railroad to that place. After this agreement was entered into Colonel Falkner stated to myself and Mr. Bell the plan by which the money could be raised, and that was on our return home to Pontotoc, we solicit subscriptions from the citizens of the town and vicinity and from any other sources that we saw proper and that when we got enough subscribed, out of which we felt sure that we could realize the sum of $5000, that we have a number of the citizens of the town, who were financially able to do so, to guarantee him the amount and turn all the subscriptions over to them, out of which to reimburse themselves; that he did not want to have to deal with subscription notes. We did as he suggested and succeeded in getting the subscriptions to the amount of seven or eight thousand dollars, probably more. We then notified Colonel Falkner to come to the town of Pontotoc, that we were ready to guarantee to him the $5000. Col. Falkner came. The citizens of the town appointed a committee consisting of O. C. Carr, J. W. Bell, J. G. Fontaine, C. M. Mitchell, R. P. Brown, and A. J. Brown, who agreed to guarantee Colonel Falkner the $5000, on condition that all subscriptions be turned over to them out of which to reimburse themselves. This committee met Colonel Falkner at the court house, at which meeting I was not present.

Q. Did you learn from the committee, composed of the citizens of Pontotoc acting for and representing the town of Pontotoc, at the meeting you have just testified about, what the contract was, which was entered into by and between Colonel Falkner, representing the railroad company and the citizens committee, representing the town of Pontotoc?

A. I heard the members of the committee state, and it was generally talked that Colonel Falkner had signed a written agreement to extend his road to the town of Pontotoc, on the conditions originally proposed to myself and Mr. Bell.

Q. Do you know what became of the writing embodying

the contract or agreement between the Railroad company and the citizens committee relative to the donation of the sum of $5000, and the extension of the road to the town of Pontotoc?

A. I do not. I do not know whether I ever saw it, I may have seen it and may not, I cannot be positive about that. The understanding was that it was in the hands of the committee, who held these subscription notes.

Q. State, if you know, what consideration was recited in the face of said notes for the execution thereof on the part of the citizens of Pontotoc and vicinity.

A. My best recollection is that the language was something like this: In consideration of the benefits to be derived from the construction of said railroad (naming it) to the town of Pontotoc, I promise to pay ,etc. I printed the notes.

Q Have you a copy of any of these notes in your possession?

A. I have not.

Q. Do you know where you could secure a copy?

A. I saw one of the notes last year some time in the city of Jackson, Miss., which was before the railroad Commission. I did not examine it, but saw it.

Q. Will you undertake to secure a copy of said notes and file same as exhibit "A" to your deposition.

A. I will.

Q. State whether or not there was any condition in any contract, verbal or written, made by and between the officers of the railroad company and the citizens of Pontotoc, that this donation or subscription was for the location of the depot, at any particular place in the town of Pontotoc.

A. None that I know of, or ever heard of until some time afte the beginning of this suit.

CROSS-EXAMINATION BY MR. R. V. FLETCHER.

Q. Mr. Bradford, when you were discussing with Col. Falkner, his plans for the extension of the road, did such plans contemplate an extension of the road farther south than the town of Pontotoc, if you remember?

A. No, sir, not at that time—that I remember.

Q. Do you know what was Col. Falkner's expectation in regard to the ultimate southern terminus of the road he was then engaged in building?

A. Nothing more than this. When he went to survey the road to Pontotoc, there was a line run a mile or two south of the town of Pontotoc.

MR. MAY: What do you mean by a line, a preliminary survey?

A. Yes, sir.

Q. Did the line or preliminary survey of which you speak, extend southward from the old terminus of the Gulf & Chicago railroad as it existed for several years after the road was built into Pontotoc?

A. Yes, sir. I never saw, that I know of, any sign more than about a mile or two.

Q. Was the preliminary survey made previously to the completion of the construction of the line to Pontotoc, or subsequently thereto?

A. I do not remember about that. When they went to survey for the town the surveyor run a line on the east side and one or two lines on the west side and then he tried to see if he could go up on the Fair Grounds. Some people said that would be a good place and Mr. Carr wanted the depot located on the east side, he owned property on the east side of the square. Mr. Bell, his brother-in-law owned the hotel on the west side of the square and wanted the depot located down there in the hollow where it was finally located, and as I stated awhile ago, some of the citizens, myself among the number, suggested that the Fair Grounds would be the most suitable place, if they could get that. We talked with Col. Falkner about that and Col. Falkner stated (I heard him) that he was going to leave it to his surveyor to locate it at the most suitable place and the most easy of access.

Q. Was it not a fact certain efforts were being made by the citizens of Houston, to secure the extension of the road as far as that town?

A. I heard that there was.

Q. Now, I believe you say that a written contract was made between Col. Falkner on the one part and the citizens' committeee of the other, and that you are not sure that you ever saw the contract or ever knew the exact recitals?

A. Yes, sir.

Q. At the time when the meeting was held, with Col. Falkner, at which the contract, if any, was entered into, the subscription notes had been turned over to the committee and Col. Falkner was no longer dealing with the citizens, but with the committee,

to whom he looked for the payment of the money? Is not that a fact?

A. I do not know, Mr. Fletcher, whether the subscription notes had been actually turned over to them or not. It was the understanding that they were to take those notes and re-imburse themselves, and I think there were more subscriptions added after that time. The last time I heard anything like a definite report, they had secured over eight thousand dollars. The citizens and the committee together, continued to all work together to secure these notes and they were to be, and were finally, and may after the notes that had already been secured up to that time, have been turned over into the hands of that committee. I do not remember about that, which had already been secured.

Q. Was it part of this understanding or contract with the railroad company, that the railroad company should receive the right-of-way and depot grounds in the town of Pontotoc, free of charge?

A. No, sir, there was not any contract with Col. Falkner and Mr. Bell, and myself. My best recollection is that nothing was said, and I have never heard of anything being said about the right of way and the depot grounds in the town. But we were to secure the right of way to the county line. I secured the most of it. I commenced outside of the corporation and went to the Union county line. Mr. Morgan and myself, who represents Mr. Falkner alone, went up the line north, securing the right of way.

Q. You are Local Attorney for the defendant railroad company, are you not?

A. Yes, sir.

Q. State whether you know about how the right of way through the town of Pontotoc and the depot grounds, came to be donated to the railroad company, and what was the consideration therefor.

A. I do not know. We were not concerned about that. The town was very much interested and it was understood that there would be no trouble about getting a right of way and depot grounds in the town. I will not be positive, but I think that Mr. Bell gave the depot grounds over there. I do not know whether he did or not. I do not know how that was secured, do not know who it belonged to. If I had time to refresh my memory, I might be able to say, but I do not know.

RE-DIRECT EXAMINATION, (GEO. W. MAY).

Q. You stated that the citizens were to secure the right of way to the county line. Was there any promise or understanding that the right of way or depot grounds should be selected at any designated place.

A. There was not, so far as I know or ever heard of until recently.

Q. State whether or not the preliminary survey, a mile or more in length—

A. I do not say whether it was a mile, two miles or five miles, I—

Q. State whether or not the preliminary survey from Pontotoc, southward, was made prior or subsequent to the contracts made by and between Col. Falkner, representing the railroad company and the citizens' committee representing the town of Pontotoc?

A. It was some time subsequent.

N. W. BRADFORD.

I hereby certify that the above and foregoing pages contain a true and correct transcript of the testimony taken in the foregoing case, on the 3rd day of March, 1906, at Jackson, Miss., signed by N. W. Bradford.

EVA M. WELLS, Stenographer.

Filed March 6, 1906.

W. T. FURR, Clerk.

DECREE.

No. 1,581.

State of Mississippi, et al.,

vs.

Mobile, Jackson & Kansas City Railroad Company, et al.

This day the same being a regular day of the March, 1906, term of this court, this cause came on to be heard on Original Bill, answer, amended answer, exhibits and proofs, and it appearing to the satisfaction of the Court, and the Court finding as a fact that a valid contract was heretofore entered into by and between the Gulf & Chicago Railroad Company, on the one hand and the citizens of the town of Pontotoc on the other hand, providing and stipulating that the line of railway of the said Gulf & Chicago Railroad Co., should be established and maintained along the line where the same was established and maintained until the consolidation of the said railroad company, with the other companies forming the present Gulf & Chicago Railway Company, which said contract is a present, valid, binding and subsisting contract and obligatory upon the said defendant companies, and the court further finding as a fact that the citizens of the town of Pontotoc have never given their consent to the abandoment of any part of the said line of railway or to any change in the line of the railway, and the court finding further that the citizens of the town Pontotoc each and all of them who contributed to the fund of $5,500.00 paid the

said Gulf & Chicago Railroad Company, as aforesaid, or any citizen who has invested money or erected business houses or residences on the faith of said contract and the location of the said line of railway at the place designated in said contract have not consented to the said abandonment or removal, and the court finding further that all part of the original line of the said Gulf & Chicago Railroad Company, from the point where the proposed new line diverges from the original line to the southern terminus of the said original line comprising about 6,700 feet has been abandoned by the defendant companies, and the court finding further that no natural obstacles or imperious necessity prevents the said defendant companies from broadening and standardizing the said abandoned portion and making it a part of the main line of the proposed railroad, and no such obstacles of necessity exists to prevent the said companies from extending their said line from the southern terminus of the said original line, and it appearing further that the chief engineer of the said defendant companies had not been informed or notified by the officers of the said defendant companies was had then and there notice of said obligations at the time he located the said line that any legal or contractual obligation rested on defendant companies to maintain the said line as a part of the main line, and that the allegations of the bill have been sustained by the proof and that the complainants are entitled to the relief prayed for. It is therefore ordered, adjudged and decreed that the injunction heretofore granted be and the same is hereby made perpetual and that said defendant companies are hereby perpetually enjoined from building and operating a railroad along any line that does not include and comprise the original line of the said Gulf & Chicago Railroad Company, as originally constructed and maintained, and that said defendant companies are hereby directed and commanded to broaden and standardize the entire line of the original narrow gauge railroad, including that part which has been heretofore abandoned as aforesaid, throughout its entire length and that said defendant companies are hereby commanded and directed to construct its line of railway in such way as to include as part of its main line all the line of the narrow gauge line, and it is further ordered that the said defendant companies begin work of broadening and standardizing that part of the line heretofore abandoned within thirty days of the rendition of this decree, and directs that the broadening and standardizing of this abandoned line must be completed within sixty days of this date, and that the said defendant railroad companies shall begin the operation of all their trains and the delivery and receipts of all freights and passengers over and upon the said abandoned part as aforesaid within sixty days of the date of this decree, and it is further ordered and decreed that the consturction of the line so as to connect the new line with the original line from the southern termi-

nus of said original line shall be completed within six months of this date, and it is further decreed that the modification of the injunction heretofore made in this cause be and the same is hereby revoked and set aside, and it is further decreed that in case an appeal is taken in this cause as to the preventive part of the injunction herein made perpetual no supersedeas shall be allowed upon any terms, but as to mandatory part of the injunction seeking affirmative relief, supersedeas will be granted upon making application for appeal and filing a bond in the sum of $5,000.00 conditioned as provided by law with good and sufficient sureties to be approved by the clerk, provided same is applied for and bond given within five days of the rendition of this decree and provided said appeal be prosecuted to the April Term of the Supreme Court, 1906.

It is further ordered that defendants be taxed with all the costs in this behalf expended for which let execution issue as at law.

Ordered, adjudged and decreed this 10th day of March, 1906.

J. Q. ROBINS, Chancellor.

Filed March 10, 1906.

W. T. FURR, Clerk.

BOND.

STATE OF MISSISSIPPI,
Pontotoc County.

We, the Mobile, Jackson & Kansas City Railroad Company, a corporation under the laws of the states of Alabama and Mississippi, the Gulf & Chicago Railway Company, a corporation under the laws of the states of Mississippi and Tennessee, as principals, and J. D. Fontaine and Jno. W. Taylor, J. T. Baker and C. W. Young, as sureties, are held and firmly bound unto the State of Mississippi, the Mississippi Railroad Commission, and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, members of said Commission, in the sum of Five Thousand ($5,000.00) Dollars.

The condition of the above bond is such that, whereas, on the 10th day of March, 1906, before the Hon. J. Q. Robins, Chancellor of the First Chancery Court District of the State of Mississippi, in term time at Pontotoc in said state, in the case of the State of Mississippi, et als., vs. Mobile, Jackson & Kansas

City Railroad Company, et als., a final decree was entered against the said defendants enjoining said defendant companies from building and operating a railroad along any line that does not include and comprise the original line of the Gulf & Chicago Railroad Company as originall y constructed, and directing and commanding the defendants to broaden and standardize the entire line of the original narrow gauge railroad, including that part heretofore abandoned by said defendants, throughout its entire length, and the said defendants having prayed for and obtained an appeal with supersedeas, as provided in said decree, to the next term of the Supreme Court of Mississippi, to be held in the city of Jackson the first Monday of April, 1906, from said decree; now, therefore, if the obligors in this bond shall satisfy the decree as complained of, and such final decree as may be made in said cause, and all costs if the same be affirmed, then this obligation to be void; otherwise to remain in full force and effect.

Witness the signatures of said parties this 13th day of March, A. D., 1906.

MOBILE, JACKSON & KANSAS CITY RAILROAD CO.,
By McINTOSH & RICH, Attorneys,

GULF & CHICAGO RAILWAY COMPANY,

By McINSTOH & RICH, Attorneys.
JNO. W. TAYLOR,
J. T. BAKER,
C. W. YOUNG,
J. D. FONTAINE.

I hereby approve the above bond and the sureties this 14th day of March, A. D., 1906.

W. T. FURR,
Clerk Chancery Court, Pontotoc County, Miss.

Filed this 14th dny of Mnrch, 1906.

W. T. FURR, Clerk.

STATE OF MISSISSIPPI,
Poatotoc County.

I, W. T. Furr, Clerk of the Chancery Court in and for said county, do hereby certify that the foregoing pages contain a full, true, perfect and complete transcript of the papers and the cause,

Number 1581, The State of Mississippi, et al., vs. M. J. & K. C. R. R. Co., et al., as the same appears of record in my office.

Given under my hand and seal of said court affixed this the 30th day of March, 1906.

[SEAL] W. T. FURR, Chancery Clerk.

IN THE SUPREME COURT OF MISSISSIPPI.

April Term, A. D., 1905.

No. 11,802.

State of Mississippi, et al., Appellants,

vs.

M. J. & K. C. Railroad Company, et al., Appellees.

ASSIGNMENT OF ERRORS (First Appeal).

Now comes the appellants by their attorneys and complain of error in the action of the Court below as follows:

The Court erred in sustaining the motion of defendants (appellees here), to dissolve the injunction, and in rendering its decree dissolving the same.

(SIGNED): R. O. FLETCHER,
J. N. FLOWERS, Ass't. Att'y. Gen'l.,
Counsel for Appellants.

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

County of Hinds.
At the April Term, 1906.
Third District.

Mobile, Jackson & Kansas City Railway Company, et al.,

vs.

State of Mississippi, et al.

ASSIGNMENT OF ERRORS (Second Appeal).

Come the appellants herein, the Mobile, Jackson & Kansas City Railway Company, and by their attorneys assign for error as follows:

The Court below erred:

1. In rendering the decree herein rendered by which the injunctions were ordered as set forth in said decree, and erred in ordering each of said injunctions.

2. The Court erred in granting any relief whatever to complainants in this cause, and in failing to dismiss the Bill and the cause.

3. The Court erred in rendering the decree herein rendered as shown by the record; and it so erred amongst other reasons, for the special reason that such decree was in effect and substance a decree prohibiting the appellants from establishing and maintaining its depot at the site of the new depot established by them as shown by the record, and was in effect an adjudication upon the matters and things involved in the suit in the United States Court in and for the Southern District of Mississippi, of which the said United States Court has full jurisdiction and which was still pending therein, and which is shown by Exhibit "A" to the Answer in this cause of these Appellants; the said decree herein complained of and so rendered being an evasion of said injunction, and the prosecution of this case to final decree herein such as was sought and obtained herein, being in contempt by said complainants herein, these appellees, of the said injunction of the United States Court.

4. Because in and by said decree the obligation of the contract right to change the location of the tracks of said railroad, embodied in Section 8 of "An Act to incorporate the Ripley Railroad Company," approved May 13th, 1871, and in the Articles of organization of the Gulf & Chicago Railroad Company, set forth in book of miscellaneous record, Volume 1, page 88, of the office of the Secretary of State of the State of Mississippi, is impaired by the application thereto and the setting aside thereby of the subsequent legislation of the State of Mississippi of the Act of 1890, and of the Annotated Code of 1892, establishing and defining the powers of the Mississippi Railroad Commission, all in violation of the provisions of the Constitution of the United States, Section 10, Article 1, prohibiting any state from passing any law impairing the obligation of contracts.

5. Because in and by the said decree which undertakes to restrain these Appellants in the matters therein dealt with, and to require them to retain and incorporate into their railroad system the southern extremity of the old narrow gauge railroad leading into the town of Pontotoc, under and by virtue of the legislation of the State of Mississippi of the year 1890, and of the Annotated Code of 1892, establishing and defining the powers of the Mississippi Railroad Commission, and of the Constitution of the State of Mississippi, adopted in 1890, Section 189 thereof, an unlawful burden is imposed upon the business of these Complainants in carrying on commerce in freights and passengers, and in transporting the mails of the United States between the states of Alabama, Mississippi and Tennessee, and other states of the United States of America—all in violation of Section 8 of Article 1, of the Constitution of the United States whereby the power is reserved to the Congress of the United States to regulate the commerce amongst the several states, and whereby the power is reserved to the Congress of the United States, to establish post-offices and post roads and to carry on the business of the post-office department of the United States Government.

6. For other causes to be assigned at the hearing.

Respectfully submitted,

McIntosh & Rich,
Flowers & May,
Mayes & Longstreet,
Attorneys for Appellant.

April Term, A. D., 1906, Monday, June 11th, 1906.

No. 12,157.

Mobile, Jackson & Kansas City Railroad Company, et al.,

vs.

Railroad Commission of Mississippi.

This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Pontotoc County, and this Court having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause at the March term thereof, A. D., 1906,

on the 10th day of March, 1906, be and the same is hereby affirmed, by this Court, and that the appellee do have and recover of the appellant and J. D. Fontaine, J. W. Taylor, J. T. Baker and C. W. Young, sureties, in the appeal bond, the costs of this cause in this court and in the court below, to be taxed, etc.

Mobile, Jackson & Kansas City Railroad Company, et al.,

vs.

State of Mississippi, et als.

WHITFIELD, C. J.:

The former opinion in this case expressly held that the consolidation was conditioned upon the broadening and standardizing the then existing narrow-gauge railroad, and making it a part of the main line of railroad operated by the consolidated corporation. Whether the statements in the petition for consolidation "that the railroads were in no ways parallel and competing," etc., were "jurisdictional facts upon the existence of which depended the power of the corporation to consolidate," we say nothing in this opinion. If that is too broad a statement, it certainly must be true, as held in the former opinion, that compliance with the statements in that petition, as to broadening and standardizing the narrow gauge railroad and making it a part of the main line of railroad were conditions upon the compliance with which alone the consolidation was consented to by the Railroad Commission. If therefore, these conditions were not complied with, the consolidation was of no effect. As held in the former opinion, if there had been no consolidation, these two railroads would have been parallel and competing lines between which no consolidation was permissible under our laws; and as held in the former opinion, an "express grant of power by the legislature," for the two companies to consolidate would have been void, "as being in contravention of the general statutory inhibition" against consolidation or purchase of competing lines of railroads, which cannot, without violating section 87 of the Constitution, be suspended "for the benefit of any individual or private corporation or association." Y. & M. V. Ry. Co. v. So. R. R. Co., 83 Miss., 746.

Section 3587, Code 1892, requires the consent of the railroad Commission to a consolidation and, as held in the former opinion, Chapter 80, Acts 1898, forbids the consolidation of parallel or competing railroads, and permitted the consolidation of other railroads, only with the approval of the Railroad Commission. The appellants recognized this law as binding and consequently in their petition, stated that the railroads were "in no way parallel or competing lines," and expressly pledged themselves to broaden and standardize the then existing narrow gauge railroad, and to make it a part of the main line operated by the consolidated corporation. It is nothing short of inequitable on the part of appellant, having gotten the consent of the Railroad Commission to consolidate upon these express conditions, to violate the conditions, and refuse to broaden and standardize the entire narrow gauge road, and make it a part of the main line of said railroad corporation. And it is upon this ground, and this ground alone, that we now hold that the decree of the Chancellor should be affirmed.

So far as the Stegall Bill is concerned, it is perfectly obvious, as already held in the former opinion, that this special Act, which was in substance for the benefit of this particular corporation, was under the general statute laws which we have just referred to with respect to consolidation, palpably and manifestly violative of section 87 of the Constitution, and plainly null and void.

We have nothing to say in this opinion about the depot or its location. On that point, the court said before: "Where its new depot shall be located, in what portion of the town, it is not a matter involved in this litigation and is a question for future discussion between the appellees and the Railroad Commission." This declaration expressly took out of this case any consideration of the location of the depot. We have nothing to do with that matter; we deal alone with the obligation voluntarily entered into by the appellants with the Railroad Commission, that, if they should be permitted to consolidate, they would broaden and standardize the then existing narrow-gauge railroad and make it a part of their main line; and that, and **that only**, is the core of this contention, and that, and **that precisely** is what we deal with, and decide in this case, to-wit, that these appellants are bound by their solemn obligation, deliberately entered into, as stated above, to broaden and standardize the narrow-gauge

railroad and to make it a part of the main line. The depot is a matter with which we have no concern.

One or two other precautionary observations we make. The former opinion expressly waived any consideration as to "what are the subsisting legal rights and obligations arising under the alleged written contract as to the original location of the depot"; and we now, further, expressly decline to render any decision as regards the rights of those citizens of the town of Pontotoc who contributed the $5,500 to insist upon a perpetual maintenance of the depot at the old location; nor do we intimate anything as to their right to institute damage suits; nor do we make any decision as to whether, in this suit by the State through its Railroad Commission, the rights of private parties could be at all properly considered; we dismiss each and all of these three propositions, absolutely, from our consideration. If it be true, as very ably argued by the learned counsel for appellant, that the contract for the perpetual maintenance of a depot at a particular place in a town, might be void as against public policy, since the rights of the greater and larger public—the true public—are to be considered in such matters rather than the supposed rights of a few citizens who may own property near the depot, and who we charge with a knowledge of the law, it is yet not necessary to the decision of this case that that point should be determined. The view of the learned counsel for the appellants seems sound on the authorities cited from the U. S. Supreme Court, and from our own case, State v. A. & V. R. R. Co., 68 Miss., 653; but it could not, at all be said, in view of that, if the contract originally made might be void as against public policy, that, that consideration as to the perpetual maintenance of the depot has anything whatever to do with the point in this case, which does not affect the depot at all, but only the agreement on the part of the appellant, as stated, to broaden and standardize the then existing narrow-gauge railroad, and to make it a part of its main line. It was pointed out in the former opinion that there could have been no consolidation had the appellants' line of railroad been run through, because plainly then the two roads would have been parallel and competing. If, as an absolute necessity for running its road through to Middleton, Tennessee, from Decatur, Mississippi, passing through Pontotoc County, these roads had to be consolidated before, so as not to become paralell and competing, and

if, in order to obtain the consent of the State, through its Railroad Commission, appellants obligated themselves, in their petition for consolidation, to broaden and standardize the said narrow-gauge railroad, and make it a part of the main line of its road, it is too late now to attempt to recede from these express conditions, too late to accept the benefits of consolidation and repudiate the solemn pledges made by appellants that it would broaden and standardize the said narrow gauge and make it a part of its main line.

Nor do we desire to be understood as holding that the case of Lusby v. Railroad, 73 Miss., 364, prohibits a railroad company, which has once located its line, from making any slight change in its line imperatively demanded by the necessities of the situation, provided that change be accomplished without calling into exercise, for the second time, the State's power of eminent domain, Elliott on Railroads, vol. 3,930. Assuredly a railroad can make such change, if it can, by private agreement with landowners, acquire the change in the right of way necessarily demanded by the situation. We make this as a cautionary observation only, as we do not think the Lusby case has any bearing whatever upon the point upon which this case must turn. Nor do we think the contention of learned counsel for appellant that the original charter of the Ripley Railroad Company, section 8 in the Act of 1871, 275, to the effect that that company might exercise the power of eminent domain just as in its original location "for the purpose of making such railroad or repairing or changing it afterwards," at all affects the duty of these appellants, under their solemn agreement above set forth, according to the conditions on which the right to consolidate was granted, to broaden and standardize the said narrow-gauge railroad in its entire length, and make it a part of their main line of railroad. They did not stand in the court below on this provision of their charter; they did not, in the inception of this matter, when they filed their petition for consolidation, invoke this section 8 as authority for "changing" the line of the narrow-gauge; deflecting as shown by the evidence in this case it has been deflected. That would have presented a very different proposition; but they sought the change actually and precisely and only upon the conditions upon which the right to consolidate was granted them. It would be inequitable in the highest degree on their part to

obtain the consent of the State, through its Railroad Commission, to consolidate upon the express agreement to broaden and standardize the narrow-gauge railroad in its entire length, and make it a part of their main line of railroad, and rest upon this alone, and here, for the first time, upon the second appeal to this court, to say, notwithstanding all this, that they had power, under said section 8 to "change the line of the narrow-gauge railroad as they might desire simply under said section 8. If section 8 gave them any such power—which we do not now decide—they have assuredly waived, and are estopped to invoke it, by their conduct in this matter.

In view of the various interests here involved, we direct the appellant to operate the spur track as soon as completed, connecting the main line on the north with the town of Pontotoc, broadening and standardizing it, the said spur track, and making it part of the appellant's main line, and that appellants shall have six months from the date of this decree within which to make it part of its main line, the supersedeas, meantime to remain in force.

With these modifications the decree is AFFIRMED.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1906.

MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY and GULF AND CHICAGO RAILWAY COMPANY, Plaintiffs in Error (Defendants below), vs. STATE OF MISSISSIPPI, MISSISSIPPI RAILROAD COMMISSION, and S. D. MCNAIR, President of said Commission, and J. C. KINCANNON and R. L. BRADLEY, Members, Defendants in Error (Complainants below).	PETITION FOR WRIT OF ERROR.

IN THE MATTER OF THE PETITION OF MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY, A CORPORATION ORGANIZED UNDER THE LAWS OF THE STATES OF ALABAMA AND MISSISSIPPI, AND GULF AND CHICAGO RAILWAY COMPANY, A CORPORATION ORGANIZED UNDER THE GENERAL LAWS OF THE STATE OF MISSISSIPPI, FOR A WRIT OF ERROR DIRECTED TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI, FOR THE

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PURPOSE OF BRINGING TO THIS COURT BY SAID WRIT, FOR REVIEW, THE CASE OF

STATE OF MISSISSIPPI, MISSISSIPPI RAILROAD COMMISSION, and S. D. McNAIR, PRESIDENT OF SAID COMMISSION and J. C. KINCANNON and R. L. BRADLEY, Members,

Complainants-Appellees,

AGAINST

MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY and GULF AND CHICAGO RAILWAY COMPANY,

Defendants-Appellants.

PETITION for a Writ of Error to require the Supreme Court of the State of Mississippi, to certify, send up and transmit to this Honorable Court, under the provisions of Section 709 of the Revised Statutes of the United States, the record in said case and the judgment and opinion of the Supreme Court of Mississippi, therein, in order that certain Federal questions arising upon the face of the record, judgment and opinion therein may be reviewed, re-examined and finally determined by the Supreme Court of the United States.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

YOUR PETITIONERS, MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATES OF ALABAMA AND MISSISSIPPI, AND GULF AND CHICAGO RAILWAY COMPANY, A CORPORATION ORGANIZED UNDER THE GENERAL LAWS OF THE STATE OF MISSISSIPPI, AND OF TENNESSEE, RESPECTFULLY SHOW:

That on the 5th day of June, 1906, the Supreme Court of the State of Mississippi, rendered a judgment against your petitioners in a certain cause then pending in said court, wherein the State of

Mississippi, Mississippi Railroad Commission, and S. D. McNair, president of said Commission, and J. C. Kincannon and R. L. Bradley, members, were complainants-appellees, and your petitioners were defendants-appellants, and by said judgment, affirmed, with certain modifications, the judgment of the Chancery Court of Pontotoc County, State of Mississippi, from which said judgment of said Chancery Court of Pontotoc County, your petitioners duly appealed to said Supreme Court of Mississipi, and said Supreme Court of Mississippi, by its judgment in said case, modified, and then affirmed as modified, the judgment of the Court below and taxed against your petitioners all the costs in said cause, and authorized and awarded the issue of execution thereon, and further, said Supreme Court of the State of Mississippi, of its own motion, and without such issue having been raised by the pleadings or appearing upon the record in said cause thus before it, directed your petitioners to operate a certain spur track of its railroad into the limits of the Town of Pontotoc, in said State of Mississippi, as formerly constituted, and to broaden and standardize it and make same a part of your petitioners' main line, and this to do within six months from the date of the decree in said Supreme Court of the said State of Mississippi, and thereby deprived your petitioners of their property without due process of law, and of their vested and charter rights under their respective charters as corporations of the State of Mississippi and of Mississippi and Tennessee respectively, and did deprive your said petitioners and each of them of the equal protection of the laws, all of which will appear by reference to the record and proceedings in said cause.

That said Supreme Court of the State of Mississippi is the highest Court in said State in which a decision in said cause could be had, and said decision, judgment and decree was a final judgment in said cause, and finally determines the same; and

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your petitioners aver that by the said opinion, judgment and decree of said Supreme Court of Mississippi in said cause, certain errors were committed to the prejudice of the defendants in said cause, your petitioners herein, and certain Federal questions appearing upon the face of the record in said cause were decided and determined adversely to the defendants, your petitioners, and adversely to the constitutional rights, privileges and immunitiesof your petitioners arising under the Constitution of the United States, and claimed and asserted as such by your petitioners; all of which will more in detail appear from the facts hereinafter averred and set forth by way of "Cause Shown" in support of this petition, and from the Assignment of Errors annexed hereto.

And your petitioners claim the right to remove said judgment and decree and the record in said cause to the Supreme Court of the United States by a writ of error, under the statutes of the United States authorizing writs of error to State courts, particularly under § 709 of the Revised Statutes of the United States, because your petitioners, defendants in said cause, claimed before the Supreme Court of Mississippi in said cause, certain rights, privileges and immunities granted and secured to your petitioners by the Constitution of the United States, and your petitioners particularly claimed:

1. That in said cause there was drawn into question the validity of authority exercised by the Mississippi Railroad Commission as supervisors of railroads in said State under and pursuant to the provisions of the statutes and Constitution of said State of Mississippi, on the ground that the same is repugnant to the provisions of Section 8 of Article I. of the Constitution of the United States, and that the judgment and decision of the said Supreme Court of Mississippi was in favor of the validity of such authority, and in contravention of the said provisions of the Constitution of the United States.

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2. That in said cause your petitioners herein claimed certain contract and vested rights arising under certain statutes of the State of Mississippi and under the provisions of the Constitution of the United States, and that the said Supreme Court of Mississippi by its judgment and opinion in said cause denied to your petitioners their said claim and rights and denied to your petitioners the equal protection of the laws and deprived them of their property without due process of law.

3. That the Supreme Court of the State of Mississippi, by its judgment and opinion in said cause, deprived your petitioners of divers and sundry other rights, privileges and immunities claimed by them under the Constitution and laws of the United States; all of which is more fully shown and recited in the causes shown, hereto annexed, in support of this petition, and all of which appears by the record and the proceedings in said cause, which are herewith submitted.

WHEREFORE, your petitioners pray the allowance of a writ of error returnable into the Supreme Court of the United States and for citation and supersedeas, and for such other orders and process as may be or become necessary in the premises, and that upon the giving of a supersedeas bond, and the approval thereof, all further proceedings in the Supreme Court of the State of Mississippi, or under and pursuant to the judgment and decree rendered therein, shall be suspended and stayed until the determination of said writ of error by the Honorable the Supreme Court of the United States.

And your petitioners will ever pray.

MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY, and

GULF AND CHICAGO RAILWAY COMPANY,

Petitioners,

By WM. HEPBURN RUSSELL,

Counsel for Petitioners.

CAUSE SHOWN.

In support of the above and foregoing petition your petitioners, Mobile, Jackson & Kansas City Railroad Company and Gulf & Chicago Railway Company respectfully show to this Honorable Court as follows:

I.—That your petitioner Mobile, Jackson & Kansas City Railroad Company is a corporation duly organized and existing under the laws of the States of Alabama and Mississippi, engaged in the operation of an interstate line of railway, operating its own line from the City of Mobile in the State of Alabama to the town of Decatur in the State of Mississippi, and thence operating, as part of its main line, connecting therewith, the line of your petitioner the Gulf & Chicago Rail*way* Company from said town of Decatur Northwardly through the State of Mississippi and the town and county of Pontotoc in said State to Middleton in the State of Tennessee, and your said petitioner, in the operation of said line of railway, is a common carrier of freight and passengers, engaged in the business of transporting freight, passengers and the United States mails through and between said States, and is in these respects engaged in interstate commerce.

II.—That your petitioner Gulf & Chicago Rail*way* Company is a corporation duly organized and existing under the laws of the States of Mississippi and Tennessee, being duly incorporated in each of said States for the construction, operation and maintenance of its line of railway.

III.—That there formerly existed in the State of Mississippi a corporation known as the Ripley Railroad Company, organized under Chapter LXXX., Laws of Mississippi of 1871, the same being entitled "An Act to Incorporate the Ripley Railroad Company" (Tr., p. 460); that said Ripley Railroad Com-

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pany became insolvent and the mortgage upon its properties was foreclosed and its properties bid in and purchased by a committee representing the bondholders and creditors of the said Ripley Railroad Company, and that said committee of bondholders and creditors as purchasers of the line, properties and franchise of said Ripley Railroad Company, organized under the laws of Mississippi a corporation known as the Gulf & Chicago Rail*road* Company, the organization of which Company in 1889 (Tr., p. 462) was ratified by Chapter 507 of the Laws of Mississippi of 1890, the same being entitled "An Act to ratify the incorporation of the Gulf & Chicago Railroad Company and for other purposes"; that said Ripley Railroad Company, some time after the date of its said legislative charter, constructed a narrow gauge line of railroad from Middleton, Tennessee, to Ripley in Tippah County, Mississippi, and thereafter made no extension or other construction under its charter, and that the line so constructed, together with its property and franchises, passed to the said Gulf & Chicago Rail*road* Company under the foreclosure sale and purchase aforesaid. Section 2 of Chapter 507 of the Laws of Mississippi of 1890, ratifying the incorporation of the Gulf & Chicago Rail*road* Company provided "that the Gulf & Chicago Rail*road* Company be, and it is hereby authorized to acquire by purchase any railroad connection with its railroad so as to *extend the same Southwardly* and centrally as near as conveniently may through the State to any point desired, cross any existing lines of railroad in the State or *effect junctions therewith*, and that any and all purchases of any railroads heretofore made be and the same hereby are validated." Under these provisions of said Act, the Gulf & Chicago Rail*road* Company prior to 1903, extended its line, the old Ripley line, from Ripley Southward to Pontotoc in Pontotoc County, Mississippi, building the same as a narrow-gauge line, the Ripley road also

being a narrow-gauge road, so that one complete line of narrow-gauge road was under the control and operation of the Gulf & Chicago Rail*road* Company from Middleton, Tennessee, to Pontotoc, Mississippi, and as such engaged in interstate traffic, commerce and business.

The said Gulf & Chicago Rail*road* extension from Ripley to Pontotoc was built into the county seat town of Pontotoc and the station in Pontotoc located at a point in the old county seat town site as it existed at the date of the construction of said road. *Afterward, however, the boundaries of the town site of the county seat of Pontotoc were enlarged so as to include additional territory.*

IV.—Your petitioner, the Gulf & Chicago Rail*way* Company of Mississippi was incorporated in the State of Mississippi in April, 1903. The application for the grant of the charter of the Gulf & Chicago Rail*way* Company (which must not be confused with the aforesaid Gulf & Chicago Rail*road* Company) provided that "the said terminus of the proposed railroad will be at a point at or near the town of Decatur, Mississippi, the northern terminus will be at a point at or near the town of Jackson, Tennessee; the point at which it is proposed the said railroad shall cross the State line of Mississippi will be at or near the town of Brownfield, County of Tippah." Said application further provided that "the line of the proposed railroad in the State of Mississippi will extend in a general northerly direction from a point at or near the town of Decatur in the County of Newton and through the counties of Neshoba, Winston, Choctaw, Webster, Chickasaw, *Pontotoc*, Union and Tippah, crossing said line of the State of Mississippi at or near the town of Brownfield in the County of Tippah to a point at or near the City of Jackson in the County of Madison, State of Tennessee, the estimated length of said line within the State of Mississippi being 192 miles."

The application for the charter of the Gulf & Chicago Rail*way* Company, for the purpose of constructing the line of railway thus described between the States of Mississippi and Tennessee, was duly granted, and the company became regularly incorporated under the laws of Mississippi on April 17, 1903 (Tr., pp. 8–10).

V.—In June, 1903, pursuant to Articles of Consolidation (Tr., pp. 11–12) the said Gulf & Chicago Rail*road* Company was consolidated with your petitioner, Gulf & Chicago Rail*way* Company, and its properties, rights and franchises under the Articles of Consolidation passed to and became the properties of your petitioner Gulf & Chicago Rail*way* Company, the consolidation being effected under the continuing name of "Gulf & Chicago Rail*way* Company."

On June 27, 1903, the said Gulf & Chicago Rail*way* Company and Gulf & Chicago Rail*road* Company made application to the Railroad Commission of the State of Mississippi for the consent and approval of the Commission to the consolidation of the Rail*road* Company with the Rail*way* Company under the name of the Gulf & Chicago Rail*way* Company. The most material provision of this application to the State Railroad Commission was the third numbered paragraph thereof, which reads as follows:

"3. The lines of railroad owned and operated, or controlled and projected by the constituent companies composing said corporation were, and are in no sense parallel or competing lines. On the contrary this consolidation was effected for the single purpose of furthering the general plan of building and equipping, and thereafter operating, a single track standard gauge line of railroad, extending in a general northerly direction from the town of Decatur, Mississippi, to the City of Jackson, Tennessee. The present

constructed narrow-gauge railroad acquired from the Gulf & Chicago Railroad Company, and running between the towns of Pontotoc, Mississippi, and Middleton, Tennessee, will be broadened and standardized and *will thereupon become a part of the line of railroad operated by the consolidated corporation.*"

Having had this application submitted to them, the Railroad Commission of Mississippi, on the 6th day of July, 1903, passed the following order:

"The application of the Gulf & Chicago Railroad Companies, organized under the laws of the State of Mississippi and Tennessee, for permission to consolidate said corporations, coming on to be heard, and it appearing to the satisfaction of the Commission that said corporations do not own or operate parallel or competing lines of railroad, it is ordered by the Commission that permission to consolidate said corporations as prayed for in said application, be and the same hereby is granted" (Tr., p. 13).

The consolidation of the Gulf & Chicago Rail*road* Company with the Gulf & Chicago Rail*way* Company thus became effective under the laws of the State of Mississippi by and with the consent, approval and authority of the State Railroad Commission.

VI.—Thereafter, the Gulf & Chicago Rail*way* Company, under its charter powers, as granted by its original charter and along the route and line set forth in and contemplated by said charter, constructed its line of railway through the County of Pontotoc and the town of Pontotoc, and established for itself, upon its own line, in the town of Pontotoc, a station and depot for freight and passenger traffic (Tr., p. 5). In thus constructing its line of railway through the town of Pontotoc in the County of Pontotoc, your petitioner, the Gulf & Chicago Rail*way* Company secured

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rights of way through said county and town, but in passing through said town located its line of railway through the town as it existed at the time said rights of way were secured and said construction proceeded with; its said line being thus projected, rights of way secured and construction proceeded with through the town of Pontotoc as extended by the additions thereto and not through the old or original town sight of the town of Pontotoc. It connected its said newly constructed line of railway through said town of Pontotoc with the narrow-gauge line of railway which it had acquired through the consolidation above stated from the Gulf & Chicago Rail*road* Company, making said connection not at the terminal point of the Gulf & Chicago Rail*road* Company at its depot in the old town site of Pontotoc, but at a point about a mile or a mile and a half North of said old depot site in said old town of Pontotoc (Tr., pp. 162-166). After your petitioner, the Gulf & Chicago Rail*way* Company had thus acquired its rights of way and constructed its line of railway through the town of Pontotoc to the junction point with the line of the Gulf & Chicago Rail*road* Company as aforesaid, and established its station, the controversy between your petitioner and the Railroad Commission of the State of Mississippi disclosed by the record in this case, arose in the following manner:

VII.—On the 12th day of January, 1904, the Railroad Commission of the State of Mississippi and its then officers and members, made and promulgated an order requiring the Gulf & Chicago Rail*road* Company to "erect a depot—freight and passenger —of sufficient size and dimensions to transact the business of said town of Pontotoc on the old site or on the ground now occupied by the people of Pontotoc as a temporary depot, the said work to be commenced not later than the 20th day of January, and completed within ninety days from said date, at or about the 20th day of April, 1904."

Your petitioners show to the Court that this order was not addressed to the Gulf & Chicago Rail*way* Company and did not purport to require it to do anything or to take any action whatsoever. It was addressed only to the Gulf & Chicago Rail*road* Company, which had been consolidated in the manner aforesaid with the Gulf & Chicago Rail*way* Company, and had thereafter ceased to exist in its original corporate capacity.

In this connection, attention should be called to the fact that prior to the making and promulgation of said order by said Railroad Commission, the old depot and terminal station of the said Gulf & Chicago Rail*road* Company's line in the old town of Pontotoc had been destroyed by fire.

VIII.—The order of said Railroad Commission for the erection of said depot not having been complied with, the State of Mississippi and its Railroad Commission and the officers and members thereof, as complainants, filed their original bill in equity in the Chancery Court of Pontotoc County, Mississippi, against your petitioners, Mobile, Jackson & Kansas City Rail*road* Company and Gulf & Chicago Rail*way* Company. Reference is made to said bill as the same appears in the Transcript (Tr., pp. 1–14).

To this bill the defendants interposed, first, their original and subsequently their amended answer, and reference is made to the amended answer as the same appears in the transcript (Tr., pp.).

The contention, and the sole contention, of the Railroad Commission, as evidenced by its order of January 12, 1904, aforesaid, at the time that said order was made was that the Gulf & Chicago Rail*road* Company must not abandon its old depot site in the original town of Pontotoc, but must construct and maintain a depot on said site. Without any further order or requirement, the State of Mississippi and the Railroad Commission instituted their suit in the Chancery Court of Pontotoc County, Mississippi, in September, 1904, as

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against your petitioners, Mobile, Jackson & Kansas City Railroad Company, lessee of the Gulf & Chicago Rail*way* Company's lines, and the Gulf & Chicago Rail*way* Company itself. The main contention of the Railroad Commission, in the first instance under this bill, was that your petitioner, Gulf & Chicago Rail*way* Company, was violating Art. 187 of the Constitution of Mississippi, which reads as follows:

"No railroad hereafter constructed in this State shall pass within three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles; *Provided*, such town or its citizens shall grant the right of way through its limits, and sufficient grounds for ordinary depot purposes."

The claim of the Railroad Commission was, that the Gulf & Chicago Rail*way* Company was constructing its line of railway through the County of Pontotoc, without constructing it through the original town site of the county seat town of Pontotoc as required by Article 187 of the Constitution of Mississippi.

The defense of the Gulf & Chicago Rail*way* Company upon this point was that it had constructed and was operating its line under its charter through the town of Pontotoc as that town existed at the time the construction of its line of railway took place. This contention was, upon a first appeal in this case, absolutely and unequivocally sustained by a decision of the Supreme Court of Mississippi, (Tr., pp. 145-161) a full report of the case upon this first appeal appearing in 86 Mississippi Reports, pages 172-200, to which reference is made.

After this hearing in the Supreme Court of Mississippi, which was upon an appeal from an injunction order, the case was proceeded with upon its merits in the Chancery Court of Pontotoc County, and a decree entered by the Chancery Court in

favor of the Railroad Commission, which appears in the Transcript (Tr., pp. 444–446).

Thereupon, your petitioners took an appeal from the Chancery Court of Pontotoc County to the Supreme Court of the State of Mississippi, making various assignments of errors upon said appeal (Tr., pp. 448–450) and among others the specific assignment that the decree of the Chancery Court of Pontotoc County was in violation and contravention of that provision of § 8, Article I. of the Constitution of the United States which confers upon Congress the power "to regulate commerce * * * among the several States." No formal assignment that the decree of the Chancery Court of Pontotoc County had the effect of confiscating the property of your petitioners, of depriving them of their property without due process of law and of denying to them the equal protection of the laws in contravention of the XIVth Amendment to the Constitution of the United States was made, because it did not and does not appear that the decree of the Chancery Court of Pontotoc County, in and of itself necessarily had or would have that effect.

Upon the hearing of the final appeal to the Supreme Court of Mississippi, that Court, in its opinion, decision and decree, enunciated for the first time the proposition that your petitioners, and particularly your petitioner Gulf & Chicago Rail*way* Company, must abandon its line of railway, its rights of way, its station and its property as the same then existed, into and through the Town of Pontotoc, and that your petitioners must cease to operate trains over said line of railway through said town or to maintain said depot and station upon said line in said town and required your petitioners to acquire new rights of way along a new and different route into and through said town and to a point of junction at the terminal station or depot of the old narrow-gauge line of the aforesaid Gulf and Chicago Rail*road* Company in said old town site of said town of Pontotoc (Tr., pp. 451–455).

The Supreme Court of Mississippi undertook, in its opinion, to avoid all Federal questions arising in the case by placing the same upon the ground of *estoppel* and of the existence of an implied contract in the nature of an *estoppel*, preventing your petitioners from constructing, maintaining and operating the said line of railway of the Gulf & Chicago Rail*way* Company through the town of Pontotoc. It seems too plain for argument that this line of reasoning upon the part of the learned Supreme Court of Mississippi was and is but an evasion of the Federal questions involved in the case, intended to cover up the actual confiscation of the properties of the Gulf & Chicago Rail*way* Company in said town of Pontotoc, in violation of the XIVth Amendment to the Constitution of the United States, and also to cover up and evade the manifest interference by the judgment and decree of the Supreme Court of Mississippi with the business of interstate commerce in violation of Section 8, Article I., of the Constitution of the United States. The novel question is thus presented as to one of the Federal questions, *that it arises for the first time upon the decree and opinion of the Supreme Court of Mississippi itself, that opinion and decree having the effect of depriving your petitioners of their property without due process of law and denying to them the equal protection of the laws, and confiscating their property and denying them their vested contract rights within the State of Mississippi, all of which grounds of Federal jurisdiction are here invoked and relied upon and assigned as errors upon this application for a writ of error, in order that the decision of the Supreme Court of Mississippi in this case may be reviewed by the Supreme Court of the United States.*

In this connection, attention is directed to Chapter 143 of the Laws of Mississippi of 1906, invoked and relied upon in the Supreme Court of Mississippi upon the hearing of this case, which law of the State of Mississippi, as your petitioners allege and

charge, constitutes a contract between the State of Mississippi and your petitioners, under which your petitioners acquired and have vested contract rights, of which they are, by the said decision and decree of the Supreme Court of Mississippi deprived without due process of law and in violation of the XIVth Amendment to the Constitution of the United States.

In support of their right to a writ of error upon this state of the record, your petitioners submit the following authorities:

It is the settled law of this case—*res judicata*—that plaintiff in error, the Gulf & Chicago Railway Company, had a right to construct and operate its line and to build and maintain a depot upon its line through the town of Pontotoc in the County of Pontotoc over the rights of way acquired by it, in so far as Article 187 of the Constitution of the State of Mississippi is concerned.

State of Mississippi *v.* Mobile J. & K. C. R. Co., 86 Miss., 172; S. C., 38 South. Rep., 732.

This judicial determination of this matter stands affirmed and reinforced by a legislative act in the nature of a contract and a grant of franchise between the Gulf & Chicago Railway Company and the State of Mississippi, said act being known as the "Stegall Bill," and reading as follows:

CHAPTER 143

H. B. No. 367.

AN ACT to authorize and ratify the change or abandonment of a part of the line of railroad formerly the property of the Gulf & Chicago Railroad Company, by the Gulf and Chicago Railway Company, in the county and town of Pontotoc, in the State of Mississippi.

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GULF & CHICAGO RAILROAD COMPANY AUTHORIZED TO ABANDON PART OF ITS LINE.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the Gulf and Chicago Railway Company, as consolidated, be, and it is hereby, authorized and empowered to operate its line of railroad through the town and county of Pontotoc as the same is now located and constructed, and that the abandonment of that part of the narrow gauge line, heretofore operated into the town of Pontotoc from the point at which the line is now constructed, diverged from the old line to the southern terminus of the old narrow gauge line, be and the same is hereby ratified and confirmed and approved.

NARROW GAUGE LINE TO BE BUILT OVER ABANDONED LINE.

SEC. 2. That the said Gulf and Chicago Railway Company shall, within ten days after the approval of this Act, commence the work of constructing a railroad track over the entire portion of the narrow gauge railroad right of way, heretofore abandoned by it, and shall cause the same to be connected with its main line at the point where the said main line diverges from the old narrow gauge right of way, and shall cause the same to be completed and ready for operation within six months from the passage of this Act.

FREIGHT IN CAR LOTS TO BE DELIVERED AT OLD DEPOT IN PONTOTOC.

SEC. 3. That when said track is completed over that portion of the old narrow gauge right of way heretofore abandoned it shall be the duty (at the option of the consignee) of said railway company to deliver at the southern terminus of said track, at

a suitable depot to be constructed and maintained by said railway company at said southern terminus, all freights handled by it into the town of Pontotoc in carload lots, and said railway company shall receive for shipment over its line, at said depot, carload lots of cotton offered for shipment at said depot.

RAILWAY COMPANY TO PAY ONE-HALF COST OF NEW HIGHWAYS BUILT TO DEPOT OF COMPANY.

SEC. 4. That whenever the municipal authorities of the town of Pontotoc shall select for improvement a highway from any designated point in the business portion of the town of Pontotoc to the depot of said railway company as the same is now located, constructed and used, and shall have ascertained the cost of improving said highway, it shall be the duty of said railway company to pay one-half of the cost of said improvement to such official of the municipality of the town of Pontotoc as may be authorized to receive the same; said sum, together with the equal amount appropriated by the municipality of the town of Pontotoc, to be expended in the work of improving said highway.

SEC. 5. Nothing in this act contained shall be construed to affect or impair any valid contract now existing.

SEC. 6. That this act shall take effect from and after its passage.

Becomes a law under Section 72 of the State Constitution.

Laws of Mississippi, 1906, Ch. 143.

This application for a writ of error must be sustained because one of the questions involved is iden-

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tical in principle with a leading case decided by this Court.

Illinois Central R. Co. *v.* Illinois, 163 U. S., 142, 153.

See also

St. Louis & San Francisco Ry. Co. *v.* Gill, 156 U. S., 649.

Cincinnati, New Orleans & Texas Pacific Ry. Co. *v.* Interstate Commerce Commission, 162 U. S., 184.

Lake Shore & Mich. South. Ry. Co. *v.* Smith, 173 U. S., 684.

§ 5258 of the Revised Statutes of the United States, authorizing every railroad company operated by steam and its successors and assigns "to carry upon and over its road, boats, bridges and ferries all passengers, troops, Government supplies, mails, freight and property in or from any State to another State and to receive compensation therefor and to connect with the roads of other States so as to have continuous lines for the transportation of the same to the place of destination," seems to be applicable in this case to prevent the interference by the decree and judgment of the Supreme Court of Mississippi with interstate commerce and with the carriage of interstate freight and passengers and with the mails of the United States.

As we have seen (*ante*, p. 14) it was especially set up and assigned as error in the Supreme Court of Mississippi that the decree of the Chancery Court of Pontotoc County was an interference with interstate commerce. This Federal question is, therefore, expressly raised upon the face of the record and entitles the plaintiffs in error to a writ of error, in order that the same may be heard and disposed of upon its merits by the Supreme Court of the United States.

The more novel and interesting question, growing out of the fact that the Supreme Court of Mississippi, by its modification of the decree of the

Chancery Court and affirmance of the decree as modified, has *for the first time in the course of this litigation* deprived the plaintiffs in error of their property without due process of law, and denied to them the equal protection of the laws *under circumstances where it was impossible for them to assign errors upon this point in the court below*, seems to be controlled in principle by recent decisions of this Court.

"The failure of the State court to pass upon a Federal right or immunity especially set up of record is not conclusive, but this Court will decide the Federal question if the necessary effect of the judgment is to deny a Federal right or immunity specially set up or claimed and which, if recognized and enforced, would require a judgment different from one resting upon some ground of local law."

Chicago, Burlington, &c., R. Co. *v.* Drainage Commissioners, 200 U. S., 561, 579, 580.

Otis Co. *v.* Ludlow Mfg. Co., 201 U. S., 140.

Detroit, Ft. Wayne, &c., Ry. *v.* Osborn, 189 U. S., 383.

And in one case a decision almost identical in principle with the final decision of the Supreme Court of Mississippi in the case at bar was thus disposed of:

"Where the determination by the State court of an alleged ground of *estoppel* embodied in the ground of demurrer to an answer necessarily involves a consideration of the claim set up in the answer of a contract protected by the Constitution of the United States, a Federal question arises on the record which gives this Court jurisdiction."

Grand Rapids & Ind. Ry. Co. *v.* Osborn, 193 U. S., 17.

In the case at bar, we have the added proposition that the Supreme Court of Mississippi, by its final

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opinion and judgment in the case at bar (Tr., pp. 451–455) for the first time in the course of the litigation, laid down a doctrine not applicable to the case upon the record before the Court, the only purpose of which was to ignore and evade the Federal questions involved, and upon this erroneous and inapplicable doctrine entered a final decree, the immediate effect of which was, as we think we have already demonstrated, *first*, to interfere with interstate commerce and the carriage of the United States mails; *second*, to deprive the plaintiffs in error of their property without due process of law; *third*, to deny to them the equal protection of the laws; and, *fourth*, to confiscate their property, notwithstanding the express legislative grant of powers to the plaintiffs in error by the Legislature of Mississippi to the contrary, both under the charter rights originally conferred upon the Gulf & Chicago Railway Company and the Ripley Railroad Company, and also by reason of the provisions and contract obligations of Chapter 143 of the Laws of Mississippi of 1906 above quoted in full.

WHEREFORE, having duly assigned errors in the judgment and decree of the Supreme Court of Mississippi in this case, we respectfully submit that a writ of error directed to that court should now issue.

MOBILE, JACKSON & KANSAS CITY RAILROAD CO. and
GULF & CHICAGO RAILWAY COMPANY,
Petitioners.

By WM. HEPBURN RUSSELL,
Their Solicitor.

WM. HEPBURN RUSSELL,
E. K. STALLO,
JOSEPH C. RICH,
EDWARD MAYES,
Counsel for said Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1906.

MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY and GULF & CHICAGO RAILWAY COMPANY,
Plaintiffs in Error
(Defendants below),

AGAINST

STATE OF MISSISSIPPI, MISSISSIPPI RALROAD COMMISSION, S. D. MCNAIR, President of said Commission, and J. C. KINCANNON and R. L. BRADLEY, Members of said Commission,
Defendants in Error
(Complainants below).

ASSIGNMENT OF ERRORS.

Come now, Mobile, Jackson & Kansas City Railroad Company and Gulf & Chicago Railway Company, plaintiffs in error, by their counsel, and respectfully represent that they feel themselves jointly and severally aggrieved by the proceedings, judgment and decree of the Supreme Court of Mississippi in the above entitled cause, and they separately and severally assign error thereto as follows:

I.

The Supreme Court of Mississippi erred in modifying the decree of the Chancery Court of Pontotoc County, Mississippi, and affirming said decree as modified, in this, that said judgment and decree of the Supreme Court of Mississippi by hindering, de-

laying, regulating and interfering with interstate commerce between different States of the United States is in violation and contravention of the provisions of § 8, Article I. of the Constitution of the United States.

II.

The Supreme Court of Mississippi erred in modifying the decree of the Chancery Court of Pontotoc County, Mississippi and affirming said decree as modified because said judgment and decree of the Supreme Court of the State of Mississippi is in violation and contravention of the XIVth Amendment to the Constitution of the United States in this, that it deprives the plaintiffs in error of their property without due process of law, and denies to them the equal protection of the laws and deprives them of their vested contract rights and franchises, contrary to the provisions of § 1 of Article XIV. of the Amendments to the Constitution of the United States.

III.

The Supreme Court of Mississippi erred in finding, adjudging and decreeing that the plaintiffs in error, appellants below, be required "to operate the spur track (of the Gulf & Chicago Rail*road* Company) as soon as completed, connecting the main line on the north with the Town of Pontotoc, broadening and standardizing it, the said spur track, and making it part of the appellant's main line," because the effect of said finding, judgment and decree was to deprive the plaintiffs in error of their vested contract rights and of their property without due process of law, and to deny to them the equal protection of the laws, in violation of § 1 of Article XIV of the Amendments to the Constitution of the United States, and was an interference with and regulation and control of interstate commerce in violation of § 8 of Article I of the Constitution of the United States.

IV.

The Supreme Court of Mississippi erred in this, that its finding, judgment and decree deprived the plaintiffs in error and each of them of their vested franchise and contract rights granted and secured to them by the provisions of Chapter 143 of the Laws of Mississippi of 1906, known as the "Stegall Bill" and entitled "An Act to authorize and ratify the change or abandonment of a part of the line of railroad formerly the property of the Gulf & Chicago Rail*road* Company, by the Gulf and Chicago Rail*way* Company, in the county and town of Pontotoc, in the State of Mississippi," and thus denied to plaintiffs in error and each of them the equal protection of the laws and deprived them of their property without due process of law in violation of the provisions of § 1 of Article XIV of the Amendments to the Constitution of the United States.

V.

The Supreme Court of Mississippi erred in modifying the decree of the Chancery Court of Pontotoc County, Mississippi, and in affirming said decree as modified, in this, that by said modified decree and by the judgment and decree of the Supreme Court of Mississippi herein, plaintiffs in error, and each of them, are required to make expenditures of money by the purchase of new rights of way for the line of railway of the Gulf & Chicago Rail*way* Company; and were and are required to build a new line of railway over such rights of way to be so acquired; and were and are required to erect and maintain a new depot and station house; and were and are required to abandon the existing line of railway and the existing depot and station house of the Gulf & Chicago Rail*way* Company through and in the town of Pontotoc, Mississippi, all without warrant or authority of law and in denial of the equal protection of the laws to plain-

tiffs in error and each of them, and in violation and contravention of § 1 of Article XIV. of the Amendments to the Constitution of the United States and in violation and contravention of the provisions of § 8 of Article I. of the Constitution of the United States.

VI.

The Supreme Court of Mississippi erred in adjudging and decreeing that Chapter 143 of the Laws of Mississippi of 1906, known as the "Stegall Bill," was not in the nature of a contract, and did not vest any contract and franchise rights in the plaintiffs in error, or either of them, and was not in modification or qualification of the laws and statutes of the State of Mississippi creating the Railroad Commission of said State and conferring power and jurisdiction upon it, and thereby deprived the plaintiffs in error and each of them of their property without due process of law, and denied to them the equal protection of the laws in violation of § 1 of Article XIV. of the Amendments to the Constitution of the United States.

VII.

The Supreme Court of Mississippi erred in finding, adjudging and decreeing, under the laws of the State of Mississippi creating the State Railroad Comsion of said State, and conferring powers and jurisdiction upon said Commission, that the said Commission had power, right or authority to enter into the alleged contract or agreement by implication or estoppel with the Gulf & Chicago Railroad Company or with the plaintiffs in error, or either of them, and had the right, power and authority to make or enforce an order or to invoke the jurisdiction of the courts of Mississippi to order, adjudge and decree that the plaintiffs in error, and particularly the Gulf & Chicago Railway Company, be required to abandon the operation and maintenance of the line

of railway of the Gulf & Chicago Railway Company through the town of Pontotoc in the County of Pontotoc in the State of Mississippi, and to construct an altogether new and different line and to acquire rights of way for the construction of such new and different line through the town of Pontotoc in the County of Pontotoc, State of Mississippi, when the said Supreme Court should have found, adjudged and decreed that under the laws of the State of Mississippi, said Railroad Commission was without power, authority or jurisdiction to make or enforce said orders, either through judicial proceedings or otherwise; when it should have adjudged and decreed that any laws of the State of Mississippi construed to confer power and jurisdiction upon the said Railroad Commission to make and enforce said orders, either by judicial proceedings or otherwise were in violation and contravention of the provisions of § 1 of Article XIV. of the Amendments to the Constitution of the United States, which prevents any State from depriving any person within its jurisdiction of property without due process of law, or denying to such person the equal protection of the laws.

VIII.

The Supreme Court of Mississippi erred in this, that its finding, judgment and decree is an interference with and in regulation and control of interstate commerce and in violation of the provisions of § 8 of Article I. of the Constitution of the United States.

IX.

The Supreme Court of Mississippi erred in this, that Chapter 143 of the Laws of Mississippi of 1906, known as the "Stegall Bill" was and is in limitation and qualification of the laws conferring authority and jurisdiction upon the Railroad Commission of the State of Mississippi, and was and is a contract between the State of Mississippi and the plaintiffs in error herein, and particularly the plain-

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tiff in error Gulf & Chicago Railway Company and was and is a grant of franchises and of contract rights, for a sufficient consideration, to the plaintiffs in error and particularly to the plaintiff in error Gulf & Chicago Rail*way* Company, notwithstanding which said Supreme Court of Mississippi, by its finding, judgment and decree herein, denied to the plaintiffs in error the protection and benefits of said law, deprived the plaintiffs in error of their property rights granted by said law without due process of law, and denied to them, in the matter of their contract rights under said law, the equal protection of the laws, all in violation of the provisions of § 1 of Article XIV. of the Amendments to the Constitution of the United States.

X.

The Supreme Court of Mississippi erred in this, that its finding, judgment and decree deprived the plaintiffs in error, particularly the Gulf & Chicago Railway Company, of vested contract and franchise rights under the charters of incorporation and articles of association, legislative grants and franchises of the Ripley Railroad Company, the Gulf & Chicago Rail*road* Company and the Gulf & Chicago Rail*way* Company, thereby depriving them of their property without due process of law and denying to them the equal protection of the laws, in violation of the provisions of § 1 of Article XIV of the Amendments to the Constitution of the United States.

XI.

The Supreme Court of Mississippi erred in finding adjudging and decreeing that plaintiffs in error, and particularly the Gulf & Chicago Rail*way* Company, were the mere successors in interest and obligation of the Gulf & Chicago Rail*road* Company and were bound and concluded by the order or orders of the State Railroad Commission of Mississippi addressed to it, and thereby deprived the plaintiffs in error of

their property without due process of law, and denied to them the equal protection of the laws in violation of the provisions of § 1 of Article XIV. of the Amendments to the Constitution of the United States.

XII.

The Supreme Court of Mississippi erred in finding, adjudging and decreeing that plaintiffs in error, and particularly the Gulf & Chicago Railway Company, were in the matters and things to which said finding, judgment and decree relates, subject to the power, authority, jurisdiction and control of the State Railroad Commission of the State of Mississippi, and that the courts of the State of Mississippi had power, authority and jurisdiction to enforce the orders and directions of the said Railroad Commission as against plaintiffs in error, when the said court should have found, adjudged and decreed that the court was without jurisdiction, power or authority to enforce said orders, directions and requirements of the said Railroad Commission of the State of Mississippi as against the plaintiffs in error or either of them: *First*, because said orders, directions and requirements had the effect to interfere with, hinder and delay interstate commerce in violation of the provisions of § 8, of Article I. of the Constitution of the United States; *Second*, because they had the effect of denying to plaintiffs in error and each of them the equal protection of the laws, and depriving them of their property without due process of law in violation of the provisions of § 1 of Article XIV. of the Amendments to the Constitution of the United States; *Third*, because the said orders, directions and requirements were in violation of the contract and franchise rights of the plaintiffs in error, and particularly of the Gulf & Chicago Railway Company, under their articles of association, corporate charters, grants and franchises from the State of Mississippi; *Fourth*,

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because said orders, directions and requirements had the effect of depriving plaintiffs in error and each of them, particularly the Gulf & Chicago Railway Company, of their contract and franchise rights under Chapter 143 of the Laws of Mississippi of 1906,

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XIII.

The Supreme Court of Mississippi erred in this—that the decree herein rendered in the Chancery Court of Pontotoc County, Mississippi, as modified and affirmed by the Supreme Court of Mississippi, was, in effect and substance, a decree prohibiting plaintiffs in error from establishing and maintaining the depot of the Gulf and Chicago Railway Company at the site of the new depot established by them, as shown by the record, and was, in effect, an adjudication upon the matters and things involved in the suit in the United States Circuit Court in and for the Southern District of Mississippi, of which the said United States Court had full jurisdiction and which was still pending therein, thereby denying to plaintiffs in error, due process of law and the equal protection of the laws.

MOBILE, JACKSON & KANSAS CITY RAILROAD CO.
GULF & CHICAGO RAILWAY CO.
Plaintiffs in Error.

By WM. HEPBURN RUSSELL,
Their Solicitor.

WM. HEPBURN RUSSELL,
E. K. STALLO,
JOSEPH C. RICH,
EDWARD MAYES.
Counsel for said Plaintiffs in Error.

UNITED STATES OF AMERICA, SS.,
The President of the United States of America.

TO THE HONORABLE THE JUDGE OF THE SUPREME COURT OF THE STATE OF MISSISSIPPI—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between The Mobile, Jackson & Kansas City Railroad Company and The Gulf & Chicago Railway Company, appellants, and The State of Mississippi by William Williams, Attorney General, the Mississippi Railroad Commission, and S. D. McNair, President of said Commission, J. C. Kincannon and R. L. Bradley, members, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twentieth day of November, in the year of our Lord, one thousand nine hundred and six.

JAMES H. MCKENNEY,

Clerk of the Supreme Court of the United States.

Allowed by WILLIAM R. DAY, Associate Justice of the Supreme Court of the United States.

SUPREME COURT OF THE UNITED STATES

October Term, 1906.

Mobile, Jackson & Kansas City Railroad Company and Gulf & Chicago Railway Company, Plaintiffs in Error, (defendants below)

vs.

State of Mississippi, Mississippi Railroad Commission and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, Members, Defendants in Error (complainants below).

KNOW ALL MEN BY THESE PRESENTS, That we, the Mobile, Jackson & Kansas City Railroad Company, a corporation organized under the laws of the States of Alabama and Mississippi, and the Gulf & Chicago Railway Company, a corporation organized under the general laws of the State of Mississippi, as principals, and the **American Bonding Company of Baltimore**, a corporation duly organized under the laws of the State of Maryland, and having an office at No. 34 Nassau Street, City and State of New York, as Surety, are held and firmly bound unto the State of Mississippi, Mississippi Railroad Commission and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, Members, in the sum of **Five Thousand ($5,000.00) Dollars**, to be paid to the said State of Mississippi, Mississippi Railroad Commission, and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, Members, or their certain attorneys, executors, administrators, successors or assigns, to which payment well and truly to be made, we bind oureslves, and our successors and assigns, jointly by these presents.

Sealed with our seals and dated this 16th day of November, 1906.

WHEREAS, lately at a session of the Supreme Court for the State of Mississippi, in the suit pending in said court between the State of Mississippi, Mississippi Railroad Commission, and S. D. McNair, President of said Commission and J. C. Kincannon and R. L. Bradley, Members, complainants, appellees against the said Mobile, Jackson & Kansas City Railroad Company, and the Gulf & Chicago Railway Company, defendants, appellants, a final judgment was rendered against the said Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railway Company, and the said Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railway Company, having obtained the allowance of a writ of error, and filed a copy thereof in the Clerk's office of the said Court to reserve the decree in the aforesaid suit, and a citation directed to the said State of Mississippi, Railroad Commission and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, members, citing and admonishing them to be and appear at the Supreme Court of the United States at Washington within thirty days from the date thereto;

Now, the condition of the above obligation is such that if the said Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railway Company shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and effect.

Witness the corporative signatures with the corporative seals attached of the principals and surety above named.

Mobile, Jackson & Kansas City R. R. Co.,

By R. H. Sherwood,
Ass't. Sec'y. Gulf & Chicago Ry. Co.,
By M. T. DeVault, Secretary.

[SEAL] American Bonding Company of Baltimore,
Hurlbert T. E. Beardsley,
Resident Vice-President.

ATTEST:

Charles H. Worcester,
Resident Assistant Secretary.

STATE OF NEW YORK,

ss.

City and County of New York.

On this 16th day of November, 1906, before me, a Notary Public in and for the aforesaid county, personally appeared R. H. Sherwood, to me known, and known to me to be the person who executed the foregoing instrument on the part of the Mobile, Jackson & Kansas City Railroad Company and who acknowledged to me that he executed the same for and in the name of said Company and by its authority.

FRANK E. CARSTARPHEN,
Notary Public, New York County.

STATE OF NEW YORK,

ss.

City and County of New York.

On this 16th day of November, before me, a Notary Public in and for the aforesaid county, personally appeared M. T. DeVault, to me known, and known to me to be the person who executed the foregoing instrument on the part of Gulf & Chicago Railway Company, and who acknowledged to me that he executed the same for and in the name of said Company and by its authority.

FRANK E. CARSTARPHEN,
Notary Public, New York County.

Bond approved, to operate as a supersedeas.

WILLIAM R. DAY,
Associate Justice U. S. Supreme Court.

Nov. 19, 1906.

City and County of New York,

ss.

State of New York.

On the 16th day of November, 1906, before me personally came Hulbert T. E. Beardsley, to me known, who being by me duly sworn, did depose and say that he resides in the City of New York that he is the resident Vice-President of the American

Bonding Company of Baltimore, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so fixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided by law. And the said Hulbert T. E. Beardsley further said that he was acquainted with Charles H. Worchester and knew him to be the resident Assistant Secretary of said Company; that the signature of the said Charles H. Worcester subscribed to the within instrument is the genuine handwriting of the said Charles H. Worcester and was subscribed thereto by like order of the Board of Directors in the presence of him the said Hulbert T. E. Beardsley.

EDWARD T. HEALEY (233),
Notary Public, New York County

AMERICAN BONDING COMPANY OF BALTIMORE.

Extract from minutes of a meeting of the Board of Directors of the American Bonding Company of Baltimore held at the office of the Company, at Baltimore, Maryland, on the ninth day of January, A. D., 1906.

At a regular meeting of the Board of Directors of the American Bonding Company of Baltimore, held in the office of the Company at Baltimore, Maryland, on the ninth day of January, A. D., 1906, the following resolution was adopted:

"RESOLVED, That Hulbert T. E. Beardsley and Edward B. Southworth, Jr., of the City of New York, New York, be and hereby are appointed resident Vice-Presidents of this Company at New York, New York, and are, and each of them is, hereby authorized and empowered to execute and deliver and attach the seal of the Company to any and all bonds and undertakings, for or on behalf of the Company in its business of guaranteeing the fidelity of persons holding places of public or private trust, and guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings

by law allowed or required; such guarantee bonds and undertakings, however, to be attested in every instance by one of the following named persons: Paul W. Arnold, Wight V. Abbott, or Charles H. Worcester, who are hereby appointed resident Assistant Secretaries of the Company at New York City, New York."

I, Charles H. Worcester, resident Assistant Secretary of the American Bonding Company of Baltimore, do hereby certify that the foregoing is true and correct copy of a resolution of the Board of Directors of the American Bonding Company of Baltimore and is the whole of said resolution.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the American Bonding Company of Baltimore at the City of New York, New York, this the 16th day of November, A. D., 1906.

CHARLES H. WORCESTER,
Resident Assistant Secretary.

Statement of the financial condition of the American Bonding Company of Baltimore, at the close of business September 29, 1906:

ASSETS.

United States Government Bonds	$139,725.00
State and Municipal Bonds	840,812.50
Railroad Bonds	287,625.00
Street Railway Bonds	202,200.00
Miscellaneous Bonds	58,725.00
National Bank and other stock	72,000.00
Outstanding Premiums (less commissions)	136,207.36
Interest accrued	11,307.94
Real estate	20,227.09
Call Loans (secured by collateral)	50,000.00
Mortgage Loans	18,000.00
Cash in office and depositories	103,332.32

LIABILITIES.

Capital stock	$500,000.00
	$1,940,162.21

LIABILITIES.

Capital stock	$500,000.00
Funds held as collateral, on bonds executed	110,962.40

City of Baltimore funds	200,000.00
Due for re-insurance	14,478.99
Legal reserve	403,571.70
Reserve for losses and contingencies	338,417.76
Surplus and undivided profits	372,731.36
	$1,940,162.21

City and County of New York,

ss.

State of New York.

I, Hulbert T. E. Beardsley, resident Vice-President of the American Bonding Company of Baltimore, do hereby certify that the foregoing is a true statement of the assets and liabilities of said Company at the close of business, September 29, 1906.

In testimony whereof I hereunto set my hand and affix the seal of the Company this 16th day of November, 1906.

[SEAL] HURLBET T. E. BEARDSLEY,
Resident Vice-President.

Subscribed and sworn to before me this the 16th day of November, 1906.

EDWARD T. HEALEY,
Notary Public, New York County.

[SEAL.]

CITATION.

UNITED STATES OF AMERICA,

To the State of Mississippi, by William Williams, Attorney-General, the Mississippi Railroad Commission, and S. D. McNair, President of said Commission, J. C. Kincannon and R. L. Bradley, Members—GREETING:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of Mississippi, wherein the Mobile, Jackson & Kansas City Railroad Company and the Gulf & Chicago Railway Company are plaintiffs in error and you are defendants in error, to show cause, if any there be,

why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, Associate Justice of the Supreme Court of the United States, this twentieth day of November, in the year of our Lord one thousand nine hundred and six.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Acknowledgment of Service.

JACKSON, MISS., Nov. 26th, 1906.

In behalf of the State of Mississippi, and of the Mississippi Railroad Commission, and of S. D. McNair, President of said Commission and of J. C. Kincannon and R. L. Bradley, members thereof, I do hereby acknowledge due service of this citation; also the receipt of a copy thereof and a copy of the writ of error in this cause.

WILLIAM WILLIAMS,
Attorney General, State of Mississippi.

By R. V. FLETCHER,
Assistant Attorney General.

**In the Supreme Court of the State of Mississippi,
County of Hinds.**

I, George C. Myers, Clerk of the Supreme Court of the State of Mississippi, being the Court of said State which has highest, last and final jurisdiction of all pleas and causes pending in the Courts of said State, do hereby certify that the foregoing are true, full and correct copies of the papers, each and all of them, constituting the record in the said Supreme Court of the State of Mississippi, the case of the State of Mississippi and the Mississippi Railroad Commission, and S. D. McNair, President of said Commission, and J. C. Kincannon and R. L. Bradley, members thereof, against the Mobile, Jackson & Kansas City Railroad Company, on both the first and second appeals to the said Supreme Court in said cause, the first appeal having been taken from the order

of the Chancery Court of Pontotoc County, dissolving the injunction issued on the original bill of the said Railroad Company, and the second appeal having been taken from the final decree of the Chancellor in said cause perpetuating such injunction; and of the whole of said record on both said appeals, including the two decrees of the said Supreme Court and the two opinions therein; also on petition of the said Railroad Company for Writ of Error from the Supreme Court of the United States; all of which are now on file in my office, and which, taken together, constitute the record in said Supreme Court of the State of Mississippi.

I do further certify that the said papers and documents so constituting such record, are as follows:

1. The Original Bill;
2. The application for incorporation of the Gulf & Ship Island Railroad Company;
3. The Governor's proclamation thereon;
4. The application of said Company to the Railroad Commission for consolidation;
5. The leave of Railroad Commission to consolidate;
6. The injunction writ and service;
7. Answer to the Original Bill;
8. Petition for removal to United States Court;
9. Decree removing cause to United States Court. ;
10. Petition to United States Court to modify injunction;
11. Order of United States Court modifying injunction;
12. Testimony of F. E. Dewey, of H. S. Jones;
13. Agreement of counsel;
14. Brief for Petitioner in United States Court;
15. Brief for Commission in the United States Court;
16. Motion to remand to State Chancery Court;
17. Order remanding cause to said Chancery Court;
18. Agreement with citizens of Decatur;
19. Affidavits of Jeff Wilson, R. P. Ground, J. E. Walker, O. C. Carr (1), O. C. Carr (2), C. L. Harris, W. A. Dozier, J. L. Smith, J. G. Smith, R. O. Fletcher, J. W. Bell, L. A. Latham, J. C. Kincannon, A. J. Clark, J. H. Salmon, E. C. Finley, R. P. Brown, W. W. Bell, J. E. Walker, J. W. Bell and exhibits; D. H. Hall, W. R. Pegues, et als.; C. Neal, W. F. Austin, W. R. Pegues, H. C. Stanford, C. G. DeJournette, B. L. Hyde, C. W. Burton, and

exhibits;

20. Right of Way deeds to Gulf & Chicago Railroad;
21. Certificate of W. T. Furr, Chancery Clerk;
22. Motion to dissolve injunction;
23. Decree dissolving injunction and granting appeal;
24. Petition for appeal to Supreme Court;
25. Certificate of clerk to record;
26. Assignment of errors;
27. Decree of reversal and remand;
28. Opinion of the Supreme Court first appeal, being a part of the record thereof; also the following on the second appeal;
29. Amended Answer;
30. Agreement of counsel;
31. Depositions of A. Dozier, E. C. Finley, J. C. Kincannon, and exhibits thereto; Jas. W. Bell, J. W. Walker, A. J. Clark, L. A. Latham, R. P. Brown, J. A. Salmon, O. C. Carr, S. C. Daniels, Jeff Wilson, W. W. Bell, W. Q. Furr, W. M. Robertson, H. S. Jones, H. S. Jones, recalled; B. L. Hyde, W. R. Pegues, J. W. Jernagin, W. F. Austin, J. H. Rowzee, G W. Jernagan, E. T. Winston, O. J. Knox, P. B. Wilson, W. C. Pittman, C. L. Harris, L. P. Merrill, N. W. Bradford;
32. Agreement of counsel;
33. Assignment of errors;
34. Final decree;
35. Bond for appeal;
36. Certificate of Chancery Clerk;
37. Final judgment Supreme Court on second appeal;
38. Opinion of Supreme Court of Mississippi on second appeal, being a part of the record thereof.
39. Petition for Writ of Error.
40. Petition of Writ of Error, cause shown;
41. Petition for Writ, Assignment of Errors;
42. Writ of Error from Supreme Court United States.
43. Writ of Error Bond;
44. Citation and Acknowledgment thereof.

Given under my hand and seal of said Supreme Court of Mississippi, at Jackson, in the State of Mississippi, this the 14th day of November, in the Year of our Lord, One Thousand Nine Hundred and Six, and in the One Hundred and Thirtieth Year

of the Independence of the United States of America.

GEORGE C. MYERS, Clerk.

APPENDIX.

Mississippi Code of 1892.

4302. Necessary depots to be maintained.—Every railroad shall establish and maintain such depots as shall be reasonably necessary for the public convenience, and shall stop such of the passenger and freight trains at any depot as the business and public convenience shall require; and the Commission may require all passenger trains to permit passengers to get on and off in a city at any place other than at the depot, where it is for the convenience of the traveling public. And it shall be unlawful for any railroad to abolish or disuse any depot when once established, or to fail to keep up the same and to regularly stop the trains thereat, without the consent of the Commission.

4303. Regulations for passenger depots.—The Commission shall establish such rules and regulations for the arrangment and management of passenger-depots as will secure the comforts of passengers, and it shall cause a copy thereof to be posted in each passenger-depot or reception-room.

4309. Location of station-houses.—The Commission may designate the site or location of any new building or station-house which may be ordered erected in cases where the site selected by the railroad's officials is inconvenient or inaccessible; but every depot must be located with due regard to the interest of the railroad and the public convenience.

4310. Union passenger-depot.—The Commission, whenever the public convenience may require it, shall cause union passenger-depots and transfer-stations to be erected, and may designate the dimensions and site thereof; and, if the several railroads concerned cannot agree therein, may fix the proportion to be contributed by each.

4311. Insufficient depot facilities.—The Commission may require every railroad to provide sufficient depot, storage and platform facilities; and shall hear all complaints that may be

presented in writing, as to the insufficient depot, storage or platform facilities for freight, and shall make such order thereon to secure the same as the facts and the public convenience may warrant.

4312. To inspect depots; reception rooms.—It is the duty of the commissioners to inspect the depots of all railroads from time to time, and of the commission to require comfortable and suitable reception-rooms for passengers, separate for the races, and, if it deem proper, for the sexes; and it may require such addition to or alterations in passenger-depots or station-houses as may be necessary, in its judgment, to secure ample, comfortable and suitable accommodations for all passengers. And any railroad failing to provide such reception-rooms, or to make the alterations or additions required, within the time prescribed by the commission, shall forfeit the sum of fifty dollars for each day of such failure.

An Act to Incorporate the Ripley Railroad Company.

SECTION 1.—**Be it enacted by the Legislature of the State of Mississippi:** That W. R. Cole, M. P. Lowery, Moses McCarley, W. C. Falkner, etc., etc.; they and their associates be and are hereby incorporated into and constituted a body corporate and politic, under the name and style of "Ripley Railroad Company," and by that name are hereby authorized to have and hold real and personal property for the objects and purposes, and business of said corporation, within this State, or within any other state, sovereignty or government that may authorize, sanction or permit the same to make contracts, to sue and to be sued, plead and be impleaded, to make and break a common seal, to make rules and regulations, by-laws and ordinances, for the management and direction and control of said corporation, not inconsistent with nor contrary to the laws of the State of Mississippi, and to the conditions and provisions stated and set forth in this Act, and to have, enjoy and exercise all the rights, powers and privileges pertaining to corporate bodies, and necessary for the objects and purposes of this Act, with the privilege and authority to exercise such corporate powers within the said State of Mississippi, and also within any other state of the United States that shall

recognize the existence of said corporation, and sanction, au-
corporation within its limits.

SEC. 2. **Be it further enacted,** That the general purposes and objects of this corporation, the pursuit and furtherance of which is hereby granted, are hereby defined as follows: To construct and build, and thereafter to own, maintain, manage and use a main "Trunk Railroad" upon such a route and such a course, and with such track or tracks thereupon as may be deemed by a majority of the board of directors of said corporation most proper and expedient, from the town of Ripley, in the County of Tippah, in such manner and in such direction as to intersect the Memphis and Charleston Railroad, or the Mobile & Ohio Railroad, or the Mississippi Central Railroad, or the Selma, Marion & Memphis Railroad, at such point on the line of either as the corporation may elect; and also to take, transport, carry and convey persons and property upon said railroad, by power of steam or by any other power, and to receive for such transportation, carriage and conveyance such tolls and charges as shall be from time to time established, fixed and regulated by the directors of said corporation, subject to such regulations as the legislature of Mississippi may prescribe for the government of all other roads in this state.

: : : :

SEC. 8. **Be it further enacted,** That the said company for the purpose of making said railroad, or **repairing or changing it afterwards. shall have the same right of entry on adjacent land,** and to cut, quarry, dig, take and carry away any stone, wood, gravel, earth or other materials which may be necessary as is before provided as to the right of way; **Provided, however,** That in all cases the said company shall make compensation to the owners, etc., as agreed on in manner thereinbefore provided

SEC. 9. **Be it further enacted,** That the said company may agree and contract for lands necessary for depots, or other purposes, or condemn the same in like manner, and by proceedings as hereinbefore provided for the sands on the route of the road.

: : : :

Approved, May 13th, 1871.

An Act to amend an Act entitled "An Act to incorporate the Ripley Railroad Company."

SECTION 1. **Be it enacted by the Legislature of the State of Mississippi,** That the Act entitled "an Act to incorporate the Ripley Railroad Company," approved May 13, 1871, be so amended as to extend the proposed line of said railroad to Mississippi City in Harrison county, via New Albany, in the county of Union, and that the said Mississippi City is hereby made the southern terminus of said railroad.

SEC. 2. **Be it further enacted,** That all of the rights and privileges granted to the Ripley Railroad Company be, and the same are hereby made to extend to the continuation of said line to the said Mississippi City.

SEC. 3. **Be it further enacted,** That this Act be in full force and effect from and after its passage, and all Acts and parts of Acts in conflict with the provisions of this Act be, and the same are hereby repealed.

Approved March 18, 1872.

CHAPTER XXV.

An Act to authorize purchasers of railroads under execution or decrees of foreclosures, to organize as incorporated companies, and for other purposes.

SECTION 1. **Be it enacted by the Legislature of the State of Mississippi,** That any railroad company or other incorporated company, created by the laws of this state, or created in pursuance of the laws of this state, which has heretofore or may hereafter mortgage its property and franchises, shall have heretofore been or may hereafter be sold for foreclosures of such mortgage by order or decree of any court of this state, or of the United States, having jurisdiction thereof; or which franchises or property may be sold under execution under the provisions of section 1038 of the Code of 1880, the purchasers thereof, and their assigns and successors, shall be entitled to, and be invested with all the franchises, rights, powers, privileges and immunities appertaining to, and possessed by the company or corporation whose property and franchises are thus sold, in as full and complete a manner as

the said company or corporation is or was possessed by virtue of its charter and amendments thereto, or by virtue of any other law or laws of this state; etc., etc.

: : : :

SEC. 3. **Be it further enacted,** That upon the organization being effected as aforesaid, and upon the board of directors filing with the Secretary of State, a statement signed by the members of said board, showing the name of the corporation so organized, the date of the organization, the amount of the entire capital stock, the amount of the capital stock representing the property so purchased, the shares into which divided, the situation or location of the property purchased, the name or names by which the corporation or corporations, of which it is the successor, were chartered and known, the Secretary of State shall file and record said statement, and certify the fact of such filing and recording under the great seal of the State, and thereupon the Company so organized, shall be a body corporate, with all the franchises, rights, powers, privileges and immudities, granted to the company or companies whose property and franchises were sold and bought as aforesaid, in as full and complete a manner as if the new company were granted a new charter of incorporation in the very words of the acts of incorporation and amendments thereto under which the original company or companies existed.

: : : :

SEC. 5. **Be it further enacted,** That this Act take effect and be in force from and after its passage.

Approved March 9, 1882.

STATEMENT OR ARTICLES OF ORGANIZATION OF THE GULF & CHICAGO RAILROAD COMPANY.

Be it remembered that the Ripley Railroad Company, a corporation chartered under that name by the Legislature of the State of Mississippi in the year 1871, which corporation was by the laws of Tennessee authorized and empowered to construct its railroad in that state, did construct a line of railroad from

the town of Middleton, Tennessee, to Ripley, in the State of Mississippi, a distance of 25 miles; and the said Ripley Railroad Company did mortgage its railroad to secure the payment of two hundred and fifty bonds of the denomination of one thousand dollars each—and whereas, by the decree of the chancery court of Tippah county, Mississippi, and by the decree of the chancery court of Hardeman, Tennessee, C. L. Harris, was by both the decrees appointed as commissioner, and ordered to foreclose the mortgage made by the said Ripley Railroad Company, by a sale of said railroad including all its franchises, privileges, charter rights, property of every sort embraced in and covered by the said mortgage. And, whereas, the said C. L. Harris, as such commissioner, did after having advertised the time and place of sale of said railroad in all respects as by the terms of the two decrees he was ordered to do, sell said Ripley Railroad for cash to the highest bidder at the courthouse in Ripley, Mississippi, on July 23rd, 1899, when W. O. Falkner, L. D. Hines, Willie Hines, N. G. Carter and John W. Falkner became and were the purchasers of said Ripley Railroad together with all its rights, franchises, charter privileges, iron and steel-rails, road beds, cross-ties, bridges, embankments, depots, section houses, and all property, real, personal and mixed, which was owned by the said Ripley Railroad Company. After the said W. C. Falkner, L. D. Hines, William Hines, N. G. Carter and John W. T. Falkner had purchased and paid for said railroad and procured a deed of the same from the said C. L. Harris as commissioner aforesaid, they on the same day, to-wit., the 23rd day of July, 1889, did meet at the office of W. C. Falkner in the town of Ripley, Mississippi, and proceed to organize a new railroad company under the name and style of "The Gulf & Chicago Railroad Company," as they were authorized and empowered to do by the state laws of Mississippi.

The said organization of the Gulf & Chicago Railroad Company was effected and made by the election (by ballot) of a board of directors, of five members composed of W. C. Falkner, L. D. Hines, William Hines, N. G. Carter, and John W. T. Falkner.

After the election of said board of directors, the said board met on the same day (to-wit), the 23rd day of July, 1889, and elected W. C. Falkner President, C. L. Harris Secretary, and

General Superintendent, Edwin T. Campbell, Treasurer, and John W. T. Falkner, Vice-President; and ordered that the terms of the officers this day elected shall expire on the first Monday in August, 1890, but they shall hold these offices until their successors shall be elected. After the new company was organized, L. D. Hines offered the following resolution, which was adopted, viz.:

RESOLVED, That the entire capital stock of the Gulf & Chicago Railway company, shall be and is hereby fixed at one million and forty-four thousand dollars, to be divided into shares of one hundred dollars each and that one hundred and ninety-five thousand dollars, to-wit, 1,950 shares of said stock, shall represent the line of railroad from Middleton, Tennessee, to Ripley, Mississippi, together with all the property purchased this day at the sale of foreclosure aforesaid, of said Ripley Railroad Company's mortgage. Now, therefore, be it remembered that the new railroad company, to-wit: the Gulf & Chicago Railroad Company, this day organized as aforesaid, to-wit, the Gulf & Chicago Railroad Company doth hereby declare its intention to own, operate and manage the said Gulf & Chicago Railroad under the terms of and by authority of the charter and amendments thereto, heretofore owned by the said Ripley Railroad Company, and which charter with all its rights, franchises and privileges, now belongs to it, the said Gulf & Chicago Railroad Company, by reason of its purchase and by virtue of the laws of Mississippi.

In witness whereof, we the officers and directors of the Gulf & Chicago Railroad Company have hereunto set our hands and seals this 23rd day of July, 1889.

SIGNED	W. C. FALKNER, President,	[SEAL]
	JNO. W. T. FALKNER, Vice-President,	[SEAL]
	C. L. HARRIS, Secretary,	[SEAL]
	L. D. HINES, Director,	[SEAL]
	WILLIE HINES, Director,	[SEAL]
	N. G. CARTER, Director,	[SEAL]
	E. T. CAMPBELL, Treasurer.	[SEAL]

[SEAL OF THE COMPANY]

STATE OF MISSISSIPPI, TO-WIT.:

I, Geo. M. Govan, Secretary of the State of Mississippi, do hereby certify that the annexed statement of the members of the

Board of Directors of the "Gulf & Chicago Railroad Company," a new corporation organized under the provisions of An Act of 1882, entitled: "An Act to authorize purchasers of railroads under execution or decrees of foreclosure to organize as incorporated companies, and for the other purposes, prepared and presented under and according to the requirements of Section 3 (three) of said Act, was this day filed for record and recorded in my office pursuant to said third section.

Given under my hand and the Great Seal of the State of Mississippi, at Jackson, this 25th day of July, A. D., 1889.

GEO. M. GOVAN,

[SEAL] Secretary of State.

STATE OF MISSISSIPPI,

Office of Secretary of State, Jackson.

I, Joseph W. Power, Secretary of State, do hereby certify that the attached and foregoing copy of a "Statement, or Articles of Organization of the Gulf & Chicago Railroad Company," is a true and correct copy of said "Statement or Articles of Organization of the Gulf & Chicago Railroad Company," as the same appears of record in my office in Miscellaneous Record Book No. I., pages 88, et seq., said Record Book being the official record kept for recording such documents in my office as required by law.

Witness my hand and the Great Seal of the State of Mississippi, this 14th day of November, 1906.

JOS. W. POWER,

[SEAL] Secretary of State.

Office Supreme Court, U. S.
FILED.
MAR 8 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 218.

MOBILE, JACKSON & KANSAS CITY R. R. CO., et al.,
Plaintiffs in Error,

vs.

THE STATE OF MISSISSIPPI, et al., Defendants in Error.

MOTION.

R. V. FLETCHER,
Asst. Atty. Gen., State of Mississippi,
FOR MOTION.

TUCKER PRINTING HOUSE, JACKSON, MISS.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 590.

MOBILE, JACKSON & KANSAS CITY R. R. CO., et al.,
Plaintiffs in Error.

vs.

THE STATE OF MISSISSIPPI, et al., Defendants in Error.

MOTION.

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now comes the State of Mississippi and the Mississippi Railroad Commission, et al., Defendants in Error, by William Williams, Attorney General of the State of Mississippi, and here enters a motion to vacate and discharge the supersedeas heretofore granted in this cause by Hon. William R. Day, Associate Justice of the Supreme Court of the United States, for the following reasons:

1. The said Plaintiffs in Error did not serve the writ of error heretofore granted in this cause by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation.

2. The writ of error in this cause was not applied for or obtained within sixty days after the rendering of the judgment complained of. All of which will appear from the record on file in this cause.

R. V. FLETCHER,

Asst. Atty. General, State of Mississippi,
FOR MOTION.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

MOBILE, JACKSON & KANSAS CITY R. R. CO., AND GULF & CHICAGO RAILWAY CO., Plaintiffs in Errer,

vs. No. 590.

STATE OF MISSISSIPPI, ET AL., Defendants in Error.

To Mobile, Jackson & Kansas City R. R. Co. and Gulf & Chicago Railway Co., Plaintiffs in Error:—

Please take notice that on Monday, the 11th day of March, 1907, at the opening of the Court, or as soon thereafter as counsel can be heard, the motion, of which the annexed is a copy, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Annexed hereto is a copy of brief of argument to be submitted with the said motion in support thereof.

R. V. FLETCHER,

Asst. Atty. Gen., State of Mississippi. Counsel for Defendants in Error for the purpose of the motion.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF ALABAMA.

I hereby certify that I have served the within notice on T. F. Whittlesey, General Manager M. J. & K. C. R. R., on the 20th day of February, 1907, at the City and County of Mobile, in the said Southern District of Alabama, by then and there delivering to the said T. F. Whittlesey a true copy of the within notice, together with a copy of motion and brief of counsel for appellee in the above styled cause.

Witness my hand, this 20th day of February, 1907.

G. B. DEANS,

United States Marshal Southern District Alabama.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

MOBILE. JACKSON & KANSAS CITY RAILROAD CO., ET AL., Plaintiffs in Error,

vs. No. 590.

STATE OF MISSISSIPPI, ET AL , Defendants in Error.

Affidavit.

This day personally appeared before me, Geo. C. Myers, Clerk of the Supreme Court of the State of Mississippi, R. V. Fletcher, personally known to me, and being by me first duly sworn, makes oath that he is the Assistant Attorney General of the State of Mississippi and Counsel for Defendants in Error in the above styled cause.

That on the 16th day of February, 1907, I mailed to William Hepburn Russell, Counsel for Plaintiffs in Error, New York, New York, notice of the hearing of a certain motion filed in this Court in the above styled cause, which notice was as follows:

"To William Hepburn Russell, Counsel for Plaintiffs in Error:—

Please take notice that on Monday, the 11th day of March, 1907, at the opening of the Court, or as soon thereafter as counsel can be heard, the motion, of which the annexed is a copy, will be submitted to the Supreme Court of the United States for a decision of the Court thereon. Annexed hereto is a copy of brief of argument to be submitted with the said motion in support thereof.

R. V. FLETCHER,

Assistant Attorney General, State of Mississippi, Counsel for Defendants in Error, for the purpose of the motion."

That on said 16th day of February, 1907, I mailed to E. K. Stallo, Counsel for Plaintiffs in Error, a copy of said notice above set forth.

That on the 18th day of February, 1907, I mailed to Edward Mayes, Jackson, Mississippi, and to J. C. Rich, Mobile, Alabama, each a copy of said notice, they being of Counsel for Plaintiffs in Error in said cause.

That on each of said notices, as aforesaid, there were attached copies of the motion and brief of counsel in support of same, and that such notices were mailed, postage paid, in time to reach each of the persons to whom said notices were addressed more than two weeks before the time named in said notice for the hearing of the said motion.

The motion above referred to is one to vacate and discharge the supersedeas in the above styled cause, and which motion is now on file in the Supreme Court of the United States, and is hereby specially referred to and attached to this affidavit.

R. V. FLETCHER.

Sworn to and subscribed before me, this 25th day of February, 1907.

[Seal.] GEO. C. MYERS,
Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1906.

THE MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY *et al.*,
Plaintiffs in Error,

vs.

THE STATE OF MISSISSIPPI, THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI *et al.*,
Defendants in Error.

COUNTER-MOTION IN BEHALF OF THE PLAINTIFFS IN ERROR.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Come now, Mobile, Jackson and Kansas City Railroad Company and the Gulf and Chicago Railway Company, plaintiffs in error herein, and by way of counter-motion to the motion of the defendants in error herein, now pending, to vacate the order of supersedeas, granted on November 19, 1906, and move the Court:

FIRST.—That in the event that said order of supersedeas be vacated, and that it be held by the

Court that the supersedeas and stay of proceedings granted by the Supreme Court of Mississippi in its final decree of June 11, 1906, pending which stay and supersedeas this cause was removed to this Court, is ineffective to stay further proceedings in this cause in the court below, then that this Court, in the exercise of its inherent powers by reason of the removal of this cause as a cause in equity to this Court for final determination, make an order of stay or supersedeas, staying and restraining all proceedings in this cause in the courts below, and upon the part of the defendants in error, until the final hearing and determination of this cause upon its merits in this Honorable Court, such order to be conditioned upon the giving of such bond to cover damages and costs sustained by the defendants in error as this Court may fix and require.

SECOND.—That this Court, under the power and authority conferred upon it by the Constitution of the United States, and by § 716 of the Revised Statutes of the United States, in the event that said supersedeas order of November 19, 1906, be vacated, shall make such order as equity and the justice of the cause may require, staying all proceedings upon the judgments and decrees in the courts below, or either of them, and restraining and enjoining defendants in error and each and every of them from causing any process by way of execution or writ of injunction to issue upon said judgments and decrees in the courts below, and particularly upon the decree of the Supreme Court of Mississippi entered in this cause on June 11, 1906, such order to be conditioned upon the giving of a good and sufficient bond to indemnify the defendants in error and hold them harmless from all costs and damages which they or either of them may sustain by reason of the entry of said order.

THIRD.—That (in the alternative) an order of this Court issue, conditioned upon the giving of a proper

and sufficient bond to indemnify the defendants in error, and hold them harmless from all costs and damages which they, or either of them, may sustain by reason of the entry of said order, continuing and extending the order of stay and supersedeas embraced in the opinion and decree of the Supreme Court of Alabama herein, which stay and supersedeas was in full force and effect at the time of the removal of this cause to this Court by writ of error (Transcript, p. 455, and pp. 491, 497).

WM. HEPBURN RUSSELL,
Counsel for Plaintiffs in Error.

MEMORANDUM.—In support of this counter-motion, counsel for plaintiffs in error rely upon paragraphs II. and III. of their printed brief filed in opposition to the motion of defendants in error to vacate the order of supersedeas, and, as to the equities of this counter-motion, upon the affidavits of Edward Mayes, George C. Myers and Wm. Hepburn Russell, filed and printed in connection with said brief and in opposition to said motion of the defendants in error.

Respectfully submitted.

WM. HEPBURN RUSSELL,
For Plaintiffs in Error.

E. K. STALLO,
EDWARD MAYES,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 590.

MOBILE, JACKSON & KANSAS CITY R. R. Co., et al.,
Plaintiffs in Error,
vs.
STATE OF MISSISSIPPI, et al., Defendants in Error.

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

In this Court, the State of Mississippi and the Mississippi Railroad Commission, Defendants in Error, file a motion to vacate and discharge the supersedeas heretofore granted in this case on the ground that the writ of error was not applied for and obtained within sixty days, Sundays exclusive, after the rendering of the judgment complained of.

The judgment of the Supreme Court of the State of Mississippi was rendered on Monday, the 11th day of June, 1906, as appears from the record at page 450 thereof.

The writ of error in this case was issued on the 20th day of November, 1906, more than sixty days, excluding Sundays, after the rendering of the judgment.

The bond, in this cause, was approved to operate as a supersedeas on the 19th day of November, 1906.

Section 1003 of the Revised Statutes of the United States provides:

"Writs of error from the Supreme Court to a state court in cases authorized by law, shall be issued in the same manner,

and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a Court of the United States."

Section 709 of the Revised Statutes provides inter alia:

> "The Writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a Court of the United States."

Section 1007 of the Revised Statutes of the United States provides:

> "In any case where a writ of error may be a supersedeas, the defendant may obtain such supersedeas by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment, he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may be a supersedeas, executions shall not issue until the expiration of ten days."

This Statute has often been construed and applied by this Court. Thus in

Kitchin vs. Randolph, 3 Otto, 86, (23 L. Ed. 810)

the Court, after reviewing the history of the statute, reaches this conclusion: We are, therefore, of the opinion, that under the law as it now stands, the service of a writ of error, or the perfection of an appeal within sixty days, Sundays exclusive, after the rendering of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a supersedeas, and that it is not within the power of a justice or judge of the appellate court to grant a stay of process on the judgment or decree, if this has not been done."

See also

Sage vs. Central Railroad Co., et al., 3 Otto, 412, (23 L. Ed. 933.)

Peugh vs. Davis, 110 U. S. 227, (28 L. Ed. 127).
Bigler vs. Waller, 12 Wall, 147.

Providence Rubber Co. vs. Goodyear, 6 Wall, 156.

Catlett vs. Brodie, 9 Wheat, 553.

The rule is the same whether the writ of error issues to the Supreme Court of a State or to a Court of the United States. Thus it has been said:

> "Writs of error issued under the 25th section of the Judiciary Act (Section 709 of the Revised Statutes of the United States) have the same effect as if the judgments or decrees were rendered in a Circuit Court and they operate as a supersedeas and stay execution only where the the writ of error is served by a copy thereof being lodged for the adverse party in the clerk's office where the record remains, within ten days (now sixty days) Sundays exclusive, from the date of the judgment or decree."

Slaughter House Cases, 10 Wall 273; (19 L. Ed. 915).
See also
Foster vs. Kansas, 112 U. S., 201; (28 L. Ed. 629).

The only portion of Section 1007 of the Revised Statutes not applicable to State courts is that part dealing with the ten day stay of execution.

Doyle vs. Wisconsin, 4 Otto, 50; (24 L. Ed. 64).

The proper remedy where a supersedeas has been improperly ordered is a motion to discharge the supersedeas.

Hudgins vs. Kemp, 18 How. (U. S.) 530.

Wherefore it is respectfully submitted that the supersedeas granted in this case should be vacated and discharged.

Respectfully submitted,

R. V. FLETCHER,

Asst. Atty. Gen. State of Mississippi,

FOR MOTION.

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 218.

MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY and the GULF & CHICAGO RAILWAY COMPANY,
Plaintiffs in Error,

vs.

THE STATE OF MISSISSIPPI, the MISSISSIPPI RAILROAD COMMISSION *et al.*,
Defendants in Error.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

Statement of the Case.

This case comes to this Court on a writ of error to the Supreme Court of Mississippi to review a decision and decree of that Court enforcing, modifying and, as modified, affirming a decree of the Chancery Court of Pontotoc County, Mississippi.

Transcript, pp. 450, 451, 453.

The controversy originally grew out of an order made by the Railroad Commission of the State of

Mississippi on the 12th day of January, 1904, requiring the Gulf & Chicago Rail*road* Company to "erect a depot—freight and passenger—of sufficient size and dimensions to transact the business of said town of Pontotoc on the old site or on the ground now occupied by the people of Pontotoc as a temporary depot, the said work to be commenced not later than the 20th day of January and completed within ninety days of said date, at or about the 20th day of April, 1904."

Tr., pp. 20 and 56.

The Rail*way* Company, plaintiff in error, not obeying such order, but continuing the construction of its line of railway through the town of Pontotoc as such line was then projected and laid out, and upon which line the Company had erected and was maintaining a station or depot, the Mississippi Railroad Commission and the State of Mississippi filed their original bill in the Chancery Court of Pontotoc County against the Railroad Companies, the plaintiffs in error.

On filing their bill, the complainants below (defendants in error here) obtained an injunction restraining plaintiffs in error (defendants below) "from constructing and operating a certain line of railroad from Decatur, Mississippi, to Middleton, Tennessee, or any other line of railroad from any point whatsoever to any other point passing within three miles of the county seat of Pontotoc County, Mississippi, as the said county seat was originally laid out, marked and established, without passing through said county seat, and from any *further proceedings* against the said complainants touching any of the matters in said bill contained, until our said court shall make another order to the contrary."

Tr., pp. 13, 14.

Subsequently a motion to dissolve this injunction was made upon the grounds (among others) that the injunction and the relief prayed in the bill "imposes a direct and unnecessary burden upon and is an interference with interstate commerce" (Tr., p. 141) and "because the injunction issued upon the prayer of said bill is an interference with the carrying of the United States mail" (Tr., p. 142), and because the defendants below had violated no law and the injunction was working an irreparable injury to them and their property rights.

Tr., p. 142.

On this motion the injunction was dissolved by the Chancery Court of Pontotoc County, the Court finding and decreeing "that the public interest of the country north and south of Pontotoc along the line of said railroad, as well as the interest of the railroad, will suffer by reason of the continuance of the temporary injunction," all other questions than the mere dissolution of the temporary injunction being reserved for the hearing.

Tr., pp. 142, 143.

From this order dissolving the injunction, an appeal was prosecuted by the Railroad Commission of the State of Mississippi. On that appeal, it was held that under § 187 of the Constitution of Mississippi, the Railroad Commission could not maintain the proposition that the station of the plaintiff in error, the Gulf & Chicago Rail*way* Company, must be removed from the site at which it had been established in the town of Pontotoc, and re-established within the limits of the old or original town of Pontotoc. On this point, the Supreme Court of Mississippi, on the appeal from the order dissolving the injunction, said:

"We conclude, on this branch of the case, that the appellees could not lawfully be required to construct the extension of the existing road or the

newly projected line of road, through what were the corporate limits of the original town of Pontotoc. Hence, under the facts of this record, appellants are afforded no relief by the language or intendment of § 187 of the Constitution."

Tr., p. 154, Opinion of Truly, *J.*

On other grounds, the action of the Chancery Court in dissolving the injunction was reversed and the temporary injunction reinstated, pending the hearing of the case upon its merits, the conclusion of the Court being that "the decree is reversed, the injunction reinstated, the cause remanded."

Tr., pp. 155, 161.

The hearing on the merits in the Chancery Court of Pontotoc County followed, and that Court found and decreed, "that a valid contract was heretofore entered into by and between the Gulf & Chicago Rail*road* Company on the one hand, and the citizens of the town of Pontotoc on the other, providing and stipulating the line of railway of the said Gulf & Chicago Rail*road* Company should be established and maintained until the consolidation of the said railroad company with the other companies forming the present Gulf & Chicago Rail*way* Company."

Tr., p. 444, Decree.

On this finding, the Chancery Court of Pontotoc County based a conclusion of law, namely, that "said contract is at present a valid, binding and subsisting contract, and obligatory upon said defendant companies."

Tr., p. 444, Decree.

Said Court further found in said decree that the citizens of Pontotoc "have never given their consent to the abandonment of any part of the

said line of railway or to any change in the line of railway," and that the citizens of Pontotoc had contract rights which would be infringed by such abandonment.

Tr., pp. 444, 445, Decree.

The said Court further found in its decree that "all that part of the original line of the said Gulf & Chicago Rail*road* Company, from the point where the proposed new line diverges from the original line to the southern terminus of the said original line, comprising about 6,700 feet, has been abandoned by the defendant companies."

Tr., p. 445, Decree.

And thereupon the said Court "adjudged and decreed that the injunction heretofore granted be, and the same is hereby, made perpetual, and that said defendant companies are hereby perpetually enjoined from building and operating a railroad along any line that does not include and comprise the original line of the said Gulf & Chicago Rail*road* company, as originally constructed and maintained, and that said defendant companies are hereby directed and commanded to broaden and standardize the entire line of the original narrow gauge railroad, including that part which has been heretofore abandoned as aforesaid throughout its entire length, and that said defendant companies are hereby commanded and directed to construct its line of railway in such way as to include as part of its main line all the line of the narrow gauge line * * * and that the said defendant railroad companies shall begin the operation of *all* their trains and the delivery and receipt of *all* freights and passengers over and upon the said abandoned part as aforesid. * * * And it is further ordered and decreed that the construction of the line so as to connect the new line with the

original line from the southern terminus of said original line, shall be completed within six months from this date."

Tr., pp. 445, 446, Decree.

From this final decree of the Chancery Court of Pontotoc County, Mississippi, an appeal was prosecuted to the Supreme Court of the State of Mississippi, and among the errors assigned on the appeal to that Court are the following:

(*a*) The Court erred in granting any relief to complainants and in failing to dismiss the bill and the cause.

(*b*) The Court erred in entering a decree "prohibiting the appellants from establishing and maintaining its depot at the site of the new depot established by them as shown by the record and (which) was in effect an adjudication upon the matters and things involved in the suit in the United States Court in and for the Southern District of Mississippi, of which the said United States Court has full jurisdiction, and which was still pending therein, and which is shown by 'Exhibit A' to the answer in this cause of these appellants; the said decree herein complained of and so rendered being an evasion" of an injunction issued in said cause in said United States Circuit Court, "and the prosecution of this case to final decree herein * * * being in contempt by said complainants herein (defendants in error) of the said injunction of the United States Court."

(*c*) Because under § 8 of "An Act to Incorporate the Ripley Railroad Company," approved May 13, 1871, and under the Articles of Organization of the Gulf & Chicago Rail*road* Company, the obligation of a vested contract is impaired and destroyed.

Tr., p. 449.

(*d*) Because said decree sets aside "subsequent legislation of the State of Mississippi" and is in violation of the laws of Mississippi "establishing and defining the powers of the Mississippi Railroad Commission, all in violation of the Constitution of the United States, Section 10, Article I, prohibiting any State from passing any law impairing the obligation of contracts."

(*e*) Because said decree, requiring the defendant Railroad Companies (plaintiffs in error) "to retain and incorporate into their railroad system the southern extremity of the old narrow gauge railroad leading into the town of Pontotoc, under and by virtue of the legislation of the State of Mississippi of the year 1890, and by the Annotated Code of 1892, establishing and defining the powers of the Mississippi Railroad Commission or of the Constitution of the State of Mississippi adopted in 1890, § 187 thereof," imposes an unlawful burden "upon the business of these defendants in carrying on commerce and freights and passengers, and in transporting the mails of the United States between the States of Alabama, Mississippi and Tennessee and other States of the United States of America—and in violation of § 8 of Article I of the Constitution of the United States, whereby the power is reserved to the Congress of the United States to regulate the commerce amongst the several States, and whereby the power is reserved to the Congress of the United States to establish post-offices and post roads, and to carry on the business of the Post Office Department of the United States Government."

Tr., p. 450.

(*f*) And "for other causes to be assigned at the hearing."

Tr., p. 450.

The decree in the Chancery Court of Pontotoc County, Mississippi, was entered March 10, 1906.

Tr., p. 446.

In the meantime the Legislature of the State of Mississippi, being advised of the controversy over the location of the line of railway and station of the Gulf & Chicago Rail*way* Company in the town of Pontotoc, had caused the situation to be investigated by a committee, and thereafter had enacted a law known as "The Stegall Bill," which law constitutes Chapter 143 of the Laws of Mississippi of 1906. This law is printed in full in the transcript, and to it we refer the Court in this connection.

Tr., pp. 471-473.

The Stegall Bill expressly provides "that the Gulf & Chicago Rail*way* Company as consolidated, be and it is hereby authorized and empowered to operate its line of railroad through the town of Pontotoc, as the same is now located and constructed, and that the abandonment of that part of the narrow gauge line heretofore operated into the town of Pontotoc from the point at which the line as now constructed diverged from the old line to the Southern terminus of the old narrow guage line be, and the same is hereby, ratified and confirmed and approved."

Tr., p. 472; Stegall Bill, § 1.

Said Stegall Bill, in consideration of the approval by said bill of the existing line of railway and station of the Gulf & Chicago Rail*way* in and through the town of Pontotoc, required that Company to standardize and operate "the entire portion of the narrow gauge railroad right of way heretofore abandoned by it" and to connect the same "with its main line at the point where the said main line diverges from the old narrow gauge right of way."

Tr., p. 472; Stegall Bill, § 2.

It further required the Gulf & Chicago Railway Company "to deliver at the Southern terminus of said track (the spur track to be connected with the main line as provided by § 2 above) at a suitable depot to be constructed and maintained by said Railway Company at said Southern terminus, all freights handled by it into the town of Pontotoc in carload lots, and said Railway Company shall receive for shipment over its line at said depot carload lots of cotton offered for shipment at said depot."

Tr., pp. 472, 473; Stegall Bill, § 3.

It was further provided "that this act shall take effect from and after its passage."

Tr., p. 473; Stegall Bill § 6.

And this law, not being approved by the Governor of Mississippi, became a law under § 72 of the State Constitution.

Laws of Mississippi, 1906, Chapter 143.

With this act of the Legislature of Mississippi, apparently settling the entire controversy in this case, in full force and effect, the Railroad Companies, plaintiffs in error, proceeded to and did, as will not be denied, comply with the provisions of the act, and standardized the narrow gauge line from its point of divergence from the main line of the Gulf & Chicago Railway Company into the old town site of Pontotoc at the old depot, and there established a station sufficient for the purposes required by sections 2 and 3 of the Stegall Bill, as above quoted.

Thereafter the case came on for hearing upon this appeal before the Supreme Court of Mississippi, and on Monday, June 11, 1906, the decree of the Supreme Court was entered, holding that there was no error in the decree of the Chancery Court

of Pontotoc County, and adjudged that the said decree "be and the same is hereby affirmed by this court."

Tr., pp. 450, 451, Final Decree, in the Supreme Court of Mississippi.

The Supreme Court of Mississippi, in its opinion affirming the decree of the Chancery Court of Pontotoc County, deliberately and intentionally, as we insist, placed its decision upon grounds intended to avoid and evade the Federal questions necessarily arising upon the facts of the record on appeal, and distinctly raised by the assignment of errors above stated. To that opinion of the Supreme Court of Mississippi we invite the careful scrutiny of this Court.

Tr., pp. 451-455.

From the decree and judgment of the Supreme Court of Mississippi, this writ of error is prosecuted, and errors in the proceedings, judgment and decree of the Supreme Court of Mississippi are duly assigned, as set forth in the record.

Tr., pp. 477-484.

Without repeating these assignments of error in detail here, we refer to them as printed in the transcript at the pages above cited, and rely upon each and every of them in this connection.

This brings us, in due order, to a summary of the pleadings in the case and a statement of the material facts and documents disclosed by the record.

Abstract of Record.

Allegations of the Bill: The allegations of the bill of complaint are substantially as follows:

1. That the Mississippi Railroad Commission (which is the real complainant) exists under the

laws of Mississippi and "is charged with the duty of supervising railroads and other common carriers in said State, and also with the duty of enforcing the observance of the laws of this State by Railroad Companies and other carriers."

Tr., p. 1, par. 1.

2. That the Gulf & Chicago Rail*way* Company (one of the plaintiffs in error) was organized under the general laws of the State of Mississippi in 1903, with authority to construct and operate a railroad from a point at or near the town of Decatur in Newton County, Mississippi, in a general northerly direction through the County of Pontotoc and through the State of Mississippi to the Tennessee line.

Tr., p. 2, par. 2.

A copy of the proceedings under which the Gulf & Chicago Rail*way* Company was organized, pursuant to the laws of Mississippi, is exhibited in connection with this allegation of the bill of complaint, marked "Exhibit A" thereto, and appears in full in the record.

Tr., pp. 2, 8-11.

3. That at the time of the organization of the Gulf & Chicago Rail*way* Company (in 1903) there was in existence and then being operated, a narrow gauge road from the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee by a railroad corporation known as the Gulf & Chicago Rail*road* Company; that said narrow gauge road, as then existed and being operated, was built about the year 1887, since which date it has been in existence and operated by the Gulf & Chicago Rail*road* Company "and other corporations as herein shown."

Tr., p. 2, par. 3.

4. That the said Gulf & Chicago Rail*road* Company was bound by its acquisition of the said narrow gauge line from Pontotoc, Mississippi, to Middleton, Tennessee, to preserve intact, throughout its entire length, the line of said "railroad from the town of Pontotoc North, and the consolidated corporation, the Gulf & Chicago Rail*way* Company, and its lessee, the Mobile, Jackson & Kansas City Railroad Company, were in turn bound to so continue and preserve intact the said line broadened and standardized" as was stipulated in the Articles of Consolidation hereinafter set forth.

Tr., p. 2, par. 4.

5. That prior to the 6th day of July, 1903, the said Gulf & Chicago Rail*way* Company and the Gulf & Chicago Rail*road* Company, with other corporations, were consolidated under the name of the Gulf & Chicago Rail*way* Company, and on the said 6th day of July, 1903, a petition was presented to complainant, the Mississippi Railroad Commission, praying the approval of the said Railroad Commission of the said consolidation; that in the said petition it was *stipulated* and by the granting of the petition by the said Railroad Commission it was *agreed* that the said consolidated corporation should broaden and standardize the said narrow gauge line running north from the town of Pontotoc as it then existed and was being operated, and that said existing line when broadened and standardized *as agreed* should be part of the main line of said Gulf & Chicago Rail*way* Company extending from Decatur, Mississippi, to Jackson, Tennessee.

Tr., pp. 2, 3, par. 5.

6. That at or about the date of said consolidation said Gulf & Chicago Rail*way* Company leased to the Mobile, Jackson & Kansas City Railroad Company

all of its railroad property "then constructed and being operated and that to be thereafter constructed, including the narrow gauge railroad hereinafter mentioned and operated as aforesaid from the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee, and *agreed* by said petition presented to the said Railroad Commission by the said consolidated corporation and the order thereon to be made a part of the line extending from Decatur, Mississippi, to Jackson, Tennessee, as aforesaid, and all extensions and branches thereof which said Gulf & Chicago Rail*way* Company might after that date construct, including its entire proposed line from the town of Decatur in the State of Mississippi to the City of Jackson in the State of Tennessee for the period of ninety-nine years; that since the execution of the said lease, said defendant, the Mobile, Jackson & Kansas City Railroad Company, has been in control and operation of said line of narrow gauge railroad between the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee."

Tr., p. 3, par. 6.

7. "That the said Gulf & Chicago Ry. Co., in violation of the *terms* and in disregard of the *representations* contained in its petition for approval of the said consolidation by this Commission to the effect that the said narrow gauge line of railroad extending from Pontotoc, Mississippi, to Middleton, Tennessee, should be broadened and standardized throughout its entire length and made a part of the line of said consolidated corporation *authorized to be constructed by its charter* has, as complainants are informed and believe and charge, broadened and standardized the said narrow gauge line from Middleton, Tennessee, southward to a point one mile and a half from the end of said line

within the said town of Pontotoc, *and the said defendant lessee, the said Mobile, Jackson & Kansas City Railroad Company, is now operating said line so changed to the said point to which it has been broadened and standardized, and the remaining part of said line has been* abandoned, and complainants show that that part so abandoned is the most valuable and important part of said road extending through a thickly populated district in the principal business portion of the said town of Pontotoc." It is further alleged in this connection "that the *representation* by the said consolidated corporation that it would broaden and standardize the said line of railroad extending into the town of Pontotoc, as the said line was on the date of said consolidation being operated, was *a material consideration in passing upon the said petition*, and the said consolidation would not have been approved but for the said representation."

Tr., pp. 3, 4, par. 7.

8. That said abandonment of said part of said line and the discontinuance of its operation and the refusal to broaden and standardize it was without authority from the complainant, the Mississippi Railroad Commission, and without its consent and wholly unauthorized and in violation of law and of "said order approving the consolidation aforesaid."

Tr., p. 4, par. 8.

9. That the said narrow gauge line of railway was constructed by the Gulf & Ship Island Railroad Company about the year 1887; that when the said line was extended into the said town of Pontotoc, a right of way was obtained for the location of said line by purchases, the exercise of the right of eminent domain and by donations from the people of that community; that said right of way

for said line (the Gulf & Ship Island line) in the said town of Pontotoc was selected and determined upon with a view to extending the railroad (the Gulf & Ship Island Railroad Company) on south through the town of Pontotoc, and that the said road (the Gulf & Ship Island road) was built and established, and the town has been building for the last twenty years with reference to the line of railroad then so located.

Tr., pp. 4, 5, par. 9.

It is further alleged in said paragraph that it is against the interests of the public to change the route of said railroad which will be only "for the benefit of the said defendants and of a few property owners in another part of the town of Pontotoc *recently added thereto* through which it is proposed to run the new line of railroad as hereinafter shown."

Tr., p. 5.

10. That the *original* town of Pontotoc is the county seat of Pontotoc County; that § 187 of the Constitution of the State of Mississippi provides that no railroad thereafter constructed in the State "shall pass within three miles of any county seat without passing through same and establishing and maintaining a depot therein, unless prevented by natural obstacles, provided such town or its citizens shall grant the right of way through its limits and sufficient grounds for ordinary depot purposes."

Tr., p. 5, par. 10.

11. That the conduct of the said defendants *in undertaking* to build their said line just outside the limits of the county seat (though within the extended limits of said town), is in violation of said §187 of the Constitution, in wilful disregard of the

law and of the order of the complainant, the Mississippi Railroad Commission, and shows a reckless indifference to the rights of the people long established.

Tr., pp. 5, 6, par. 11.

12. That the said defendants are actually engaged "in the said violations of the laws of the State of Mississippi and of the order of the Commission approving the consolidation aforesaid," and are infringing the rights of the public, and that the damage done and about to be done will be irreparable if not prevented, wherefore resort is had to a court of equity.

Tr., p. 6, par. 12.

13. The prayer of the bill is:

(*a*) For an injunction "temporarily restraining" defendants "and each of them from constructing and operating the said proposed line of railroad passing within three miles of the said county seat without passing through the same."

(*b*) That upon a final hearing "they be perpetually enjoined from building and operating a road along said route."

(*c*) That they be commanded "to broaden and standardize the said line of railroad extending into the said county seat of Pontotoc County, as it has been established for years, and as the said consolidated corporation agreed to do from the point north of the said county seat from which said narrow gauge line has been abondoned."

(*d*) That the said defendants be required to operate the said line into the said county seat as a part of the line built and to be built *from* Decatur, Mississippi, to Jackson, Tennessee.

(*e*) And, finally, "that they be commanded to extend the said line on through the said county seat, as required by said § 187 of the Constitution of the State of Mississippi, and as required by law and by the order of the complainant, the Mississippi Railroad Commission." The usual prayer for general relief is added.

Tr., p. 6.

The Court will note that while the bill purports to be the bill of "The State of Mississippi by William Williams, Attorney-General" (Tr., p. 1), that the State is at most only a nominal party, the real party being the Mississippi Railroad Commission and its individual members, one of whom verifies the bill.

Tr., pp. 1, 7.

AMENDED ANSWER.

The amended answer of the defendants (plaintiffs in error) may be briefly summarized as follows:

It admits the existence of the Mississippi Railroad Commission, and that it is charged with the duties alleged in the first paragraph of the bill.

It admits the organization of the Gulf & Chicago Railway Company, as alleged in the second paragraph of the bill.

It admits the allegations of the third paragraph of the bill.

Tr., pp. 162, 163.

It denies that the Gulf & Chicago Rail*road* Company was bound by the acquisition of the narrow gauge line from Pontotoc, Mississippi, to Middleton, Tennessee, "to continue and preserve intact throughout its entire length said line of railway from the town of Pontotoc, North, and that the

consolidated corporation, the Gulf & Chicago Rail*way* Company and its lessee, the Mobile, Jackson & Kansas City Railroad Company, were in turn bound to so continue and preserve intact the said line broadened and standardized," and it denies "that it is so stipulated in the articles of consolidation," and, on the contrary, the answer alleges "that by its charter the Gulf & Chicago Rail*way* Company was authorized to construct its line of road from a point near Decatur, Mississippi, in a Northerly direction through the County of Pontotoc to the town of Brownfield, in the County of Tippah, and by the articles of consolidation the constructed narrow gauge railroad acquired from the Gulf & Chicago Rail*road* Company, and running from the town of Pontotoc, Mississippi, to Middleton, Tennessee, was to be broadened and standardized, and thereupon to become a part of the line operated by the said consolidated corporation; all of which said stipulation and requirements have been strictly carried out by the defendants in said bill."

Tr., p. 163, par. 4.

It admits that prior to the 6th day of July, 1903, said Gulf & Chicago Rail*road* Company and said Gulf & Chicago Rail*way* Company were consolidated under the name of the Gulf & Chicago Rail*way* Company as mentioned in the bill, and that on the 6th day of July, 1903, "a petition was presented to the complainant, the Mississippi Railroad Commission, * * * praying the approval by said Railroad Commission of the said consolidation"; and "that in said petition it was stipulated, and by the granting of said petition by said Commission it was agreed, that said consolidated corporation should broaden and standardize said narrow gauge line running North from the town of Pontotoc, but defendants deny that it was to be so

broadened and standardized as it then existed, and was being operated throughout its entire length."

Tr., p. 163, par. 5.

It further alleges that prior to the filing of the petition for consolidation with the Railroad Commission of the State of Mississippi, seeking its approval of said consolidation, surveys had been made through the town of Pontotoc for the location of the line of the Gulf & Chicago Railway, and the establishment of its depot in said town, and that physical conditions in and around the town of Pontotoc were such that it was found to be impossible to utilize that portion of the then narrow gauge line extending from its old depot in the town of Pontotoc north about one mile.

Tr., p. 164.

It further alleges that thereupon defendants relocated that portion of the old narrow gauge line so extending north for about one mile, by agreement and understanding with the citizens of Pontotoc and the patrons of the road in that immediate vicinity. A public meeting was called in the town of Pontotoc and the relocation considered by said meeting. That this was before the application for the consolidation of the companies to the Mississippi Railroad Commission; that an overwhelming majority of those present at said public meeting approved of said relocation "and agreed that it was impracticable to broaden and standardize and operate and maintain that short portion of the old narrow gauge line because of the natural obstacles intervening to the successful building of the road South to connect with the portion then being built from Decatur, Mississippi Northward."

Tr., p. 164.

It further alleges that before the injunction restraining defendants "they had expended large sums of money in acquiring rights of way, grading its tracks and building its line along where it now lies, and had practically completed said line; had erected at great expense its depot building, and had moved into and was occupying the same; that the complainant, Mississippi Railroad Commission, had full knowledge of the expenditure of said money by the defendants, and knew full well that said money had been expended upon the faith of the agreement which they had entered into with the citizens of the town of Pontotoc and the patrons of the road."

Tr., p. 165.

It further alleges that when said consolidation was made it was the purpose and intention of the defendants, well known to the said Railroad Commission, to establish "a through trunk line of railroad for the interstate commerce and the transmission of the United States mail between the States of Alabama, Mississippi and Tennessee, and that one of the vital objects to be attained was to shorten the line of said Company in every way possible in constructing, broadening and standardizing the same so as to enable it to compete with other trunk lines leading from the waters of the Gulf of Mexico, North, West and East, and procuring for the State of Mississippi and other States through which it passed, quick communication with all markets of the world."

Tr., p. 165.

It further specifically alleges "that a refusal to permit these defendants to carry out their said purpose will impose unnecessary and unreasonable burdens upon the Interstate Commerce and will vio-

late, in letter and spirit, § 8, Article I, of the Constitution of the United States."

Tr., p. 165.

It admits that about the date of the approval of the consolidation, the Gulf & Chicago Rail*way* Company executed a lease to the Mobile, Jackson & Kansas City Rail*road* Company and that since the execution of said lease the Mobile, Jackson & Kansas City Railroad Company has been in possession of the property, operating it as alleged in the bill.

Tr., p. 165, par. 6.

It denies that the Gulf & Chicago Rail*way* Company has violated the terms contained in its petition for approval of said consolidation.

Tr., pp. 165, 166, par. 7.

It alleges that the Gulf & Chicago Rail*way* Company and the lessee, Mobile, Jackson & Kansas City Rail*road* Company, "is now operating said line changed to the said point at which it has been broadened and standardized (and the remaining part of said line has been relocated as hereinbefore alleged)."

Tr., p. 166.

It denies that one mile of said narrow gauge road has been abandoned, and denies that said relocation has been in violation of the agreement of consolidation, and, on the contrary, alleges that the petition for consolidation was made to and approved by the Mississippi Railroad Commission in contemplation of "the purpose of said consolidated company to straighten said narrow gauge line, and as thus straightened to broaden and standardize the same for the purpose and with the intention set out in this answer."

Tr., p. 166.

It further alleges that said agreement of consolidation "became and was binding upon these defendants to make, build and construct said old narrow gauge line, preserving only its general course between said terminal points mentioned in said petition."

Tr., p. 166.

It further alleges that the sole purpose and right of the Mississippi Railroad Commission was to see that the new, or consolidated, company did not, by the act of consolidation, infringe the laws of Mississippi against the consolidation of competing lines.

Tr., p. 166.

It then specifically alleges that defendants' course "in reconstructing, broadening and standardizing said narrow gauge line does not in any way infringe any law of said State, either in letter or in spirit," and it denies that the part of said narrow gauge road so relocated is the most valuable and important part of the same, or that it extends through a thickly populated district, and as to this it alleges the fact to be "that the only representation made was that the line of the consolidated company, when broadened and standardized, would in no sense be a parallel or competing line with the said narrow gauge line, and that it was the purpose and intention of said consolidated company to acquire said narrow gauge line and thereafter operate it as a part of the through trunk line having its terminals fixed between certain points set out in its charter, and in the petition for consolidation and traversing the territory intervening between and through the three States hereinbefore named in this answer; all of which is being done without inconvenience to the people of the town of Pontotoc and in strict compliance with the laws of the State of Mississippi.

Tr., p. 167.

It denies "that a part of said line has been abandoned and its operation discontinued, and that they have refused to broaden and standardize that portion;" and it further alleges "that part of said line has been relocated and adjusted to the main line of defendants."

It then states the origin of this controversy in the following allegation, to wit:

"That complainant the Mississippi Railroad Commission made an order in the month of January, 1904, requiring defendants to build a depot on that part of the line of said narrow gauge road after the same had been relocated as aforesaid, the enforcement of which order has been enjoined and restrained by the order of the United States Circuit Court for the Southern District of the State of Mississippi, which said suit is now pending in said Circuit Court of the United States, and was so pending when the injunction in this cause was granted, said United States Circuit Court having jurisdiction to hear and determine all the questions made by the complainants in said bill of complaint; and defendants further allege that this Court should not assume to adjudicate any of the matters and things herein set up, as it brings about an unseemly conflict between the jurisdiction and the authority of the Federal Court and the State Court in this cause."

Tr., p. 167.

It further alleges "that said order of complainant the Mississippi Railroad Commission requires defendants to construct said depot on the old site of the depot used by the former narrow gauge line" and that "said depot is outside of the original town of Pontotoc, and if located on the site designated by complainant Mississippi Railroad Commission, it will be directly in one of the streets of said town."

Tr., 167, 168.

It further alleges that compliance with the order of the complainant the Mississippi Railroad Commission "will cause the defendant to lengthen its line, greatly increase its fixed charges and cost of operating said line of railroad."

Tr., p. 168.

It further alleges "that the line of railroad now being constructed (in fact, now completed) by the defendant the Gulf & Chicago Rail*way* Company from Decatur, Mississippi, to Middleton, Tennessee, was constructed upon a wholly different scheme of grades from that upon which the narrow gauge line was constructed."

Tr., p. 168, par. 9.

It further adds, "that if the grades upon which the Gulf & Chicago Rail*road* (the old narrow gauge line road) was built had been adopted for the standard gauge line of defendant, the Gulf & Chicago Rail*way* Company, *it would have been practically impossible to operate* said line of railroad successfully because of the heavy grades; would have put defendant Rail*way* Company to additional cost of construction and an enormous sum of money; would have materially lengthened the line; enormously increased the cost of operating said line; and would have increased the cost to defendants of transacting all interstate business from Mobile, Alabama, through the States of Alabama, Mississippi and Tennessee."

Tr., p. 168, par. 9.

It denies the allegation that the town of Pontotoc has been building for many years with reference to the line of the narrow gauge railroad, and alleges the facts to be to the contrary.

Tr., pp. 168, 169.

It denies that the change of said line will disturb established conditions or injure the community, and avers that the interests of only a few individuals are involved, and that the citizens of the town of Pontotoc themselves acquiesced in the relocation of said line before said relocation was made.

Tr., p. 169.

It admits that the original town of Pontotoc is the county seat of Pontotoc County, but denies that defendants have violated in any way §187 of the Constitution of the State of Mississippi in building their line of consolidated railway or in the erection of the depot, and it alleges the fact to be "that the present depot of the defendants is located within the corporate limits of the town of Pontotoc, and is in full compliance with the said section of the Constitution."

Tr., p. 169.

It alleges that there are natural obstacles to the building of said line south from the end of the old narrow gauge line, such as are contemplated by said §187 of the Constitution of the State of Mississippi, and sets forth what those obstacles are.

Tr., pp. 169, 170.

It alleges that to comply with the order of the Railroad Commission as to the location of the depot and the construction of the line south from the terminus of the old narrow gauge line in the town of Pontotoc would embarrass and hinder it in its operation, and "that said line would thereby be lengthened and it would be hampered and prevented from doing an interstate business in successful competition with other trunk lines."

Tr., p. 170.

It denies that the defendants, in undertaking to build their said line are violating Section 187 of

the Constitution of Mississippi or are acting in wilful disregard of law and the order of the Mississippi Railroad Commission, or showing a reckless indifference to the rights of the people long established, and, on the contrary, alleges full compliance with §187 of the Constitution of Mississippi "in regard to the location of its line."

Tr., p. 170, par. 11.

It denies that defendants are engaged in violation of any of the laws of the State of Mississippi, alleges large expenditures by the defendants to accommodate the town of Pontotoc and its citizens, and further the interests and convenience of commerce, and alleges the fact to be "that considering the physical surroundings its depot is located at the place most convenient for the transaction of its business in the town of Pontotoc, consulting both its interest and the convenience of the public."

Tr., p. 170, par. 12.

In their original answer defendants specifically allege "that before the filing of the bill in this case by the complainant, the Mississippi Railroad Commission, it had located and constructed said line as proposed at said public meeting in the town of Pontotoc, and purchased a depot site, and erected a handsome and commodious depot on said site, into which it is now operating a standard gauge railroad; all of which was being done before and prior to the filing of the bill in this cause."

Tr., p. 18.

The original bill and the amended answer of defendants (plaintiffs in error), thus summarized, present the issues in this cause as they were submitted to the Chancery Court of Pontotoc County, Mississippi, and upon two appeals to the Supreme Court of Mississippi, the writ of error in this case

being directed to the Supreme Court of the State of Mississippi for the purpose of reviewing its decision and final decree upon the *second* appeal.

THE QUESTIONS IN CONTROVERSY.

Upon these pleadings and the facts disclosed by the record in this case, concerning which no dispute can arise, the following questions have been presented for determination in the Courts below or are now presented in this Court:

FIRST QUESTION: Was the Gulf & Chicago Railway Company required and compelled by § 187 of the Constitution of the State of Mississippi to locate and establish its station in the town of Pontotoc within the limits of the old county seat as originally existing, or was it a compliance with the requirements of the Constitution of Mississippi for it to construct its line and establish its station within the limits of the county seat of Pontotoc County as those limits had been extended and existed at the time its line of railway was located through the town of Pontotoc?

The contention of the State Railroad Commission of Mississippi that the Gulf & Chicago Rail*way* Company was violating §187 of the Constitution of Mississippi by not locating its station in the old town of Pontotoc as originally laid out, and by locating it in the extended limits of that town as it existed when the line of railway was constructed through the town, was the basis of the order of the State Railroad Commission which initiated this controversy.

Tr., pp. 3-6, 145.

That order is the *only order* ever made by the State Railroad Commission directing or requiring the Gulf & Chicago Rail*way* Company, or the Mobile, Jackson & Kansas City Railroad Company, as the lessee of the Gulf & Chicago Rail*way* Com-

pany, *to do anything* or *take any action* either in the matter of the location of a station or the establishment of a line of railway, and the record shows that that order was never in fact directed to either the Gulf & Chicago Rail*way* Company or the Mobile, Jackson & Kansas City Railroad Company, but was an order addressed and directed to the old Gulf & Chicago Rail*road* Company, which had become merged, at the time the order was made, by consolidation, into the Gulf & Chicago Rail*way* Company.

Tr., p. 82.

This contention, upon the part of the State Railroad Commission, and this order in relation to the location of the station within the limits of the old town of Pontotoc were disposed of, absolutely and finally, by the decision of the Supreme Court of Mississippi upon the first appeal in the case at bar.

In the opinion of the Supreme Court of Mississippi, delivered by TRULY, *J.*, upon the first appeal, this particular question is thus stated and disposed of:

"What is the true interpretation to be given § 187 of our Constitution, and has it any application to the facts of this litigation?" (Tr., p. 150.) * * * "§ 187 provides that 'no railroad hereafter constructed in this State shall pass within three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, provided such town, or its citizens, shall grant a right of way through its limits and sufficient grounds for ordinary depot purposes.' The contention of the appellants (the Railroad Commission) is that the term 'county seat' used in this section is to be given the meaning of that piece or parcel of ground within the confines of which, under the law, the public buildings of the county are to be located; that the framers of the Constitu-

tion meant to require every Railroad Company constructing a road under the conditions set out in the section to run its line through the limits and establish and maintain a depot within the borders of the county site as it was originally established by the legislature. So it is contended that an extension of the limits of the municipality at and within which the county site is located does not extend the limits of the county site itself, but that those boundaries remain as they were at the date when the place was designated by lawful authority as the seat of justice of the county. And this being true, it is urged that an extension of the limits of the municipality would not affect or vary the duty of a railroad company desiring to construct and project a line passing within three miles of said original county site. * * * A Constitution is framed for the guidance and government of a whole people, and words used therein are to begiven the usual and popular meaning, and unless that be the manifest intention of the framers of the instrument, phrases or terms susceptible of two different interpretations are not usually to be given a restricted, narrow or technical construction. We are, therefore, of the opinion that it was the design and intention of the framers of our Constitution to require simply that railroads thereafter constructed, whose routes should pass within three miles of the town at which, by law, the county site was located, should pass through the corporate limits of the municipality and establish and maintain a depot therein." (Tr., pp. 151, 152). * * * "We conclude on this branch of the case that appellees (plaintiffs in error) could not lawfully be required to construct the extension of the existing road or the newly projected line of road, through what were the corporate limits of the original town of Pontotoc, hence, under the facts of this record, appellants (the Railroad Commission) are afforded no relief

by the language or intendment of § 187 of the Constitution."

Tr., p. 154.

The first appeal to the Supreme Court of Mississippi upon which the question above stated was disposed of adversely to the contentions of the Railroad Commission, was an appeal taken by the Railroad Commission from an order of the Chancery Court of Pontotoc County, *dissolving the injunction* which had issued upon the filing of the bill restraining and enjoining the plaintiffs in error "from constructing and operating a certain line of railroad from Decatur, Mississippi, to Middleton, Tennessee, or any other line of railroad from any point whatsoever to any other point passing within three miles of the county seat of Pontotoc County, Mississippi, as the said county seat was originally laid out, marked and established without passing through said county seat."

Tr., pp. 13, 14.

The order modifying this injunction decreed that "the injunction heretofore granted in this case be, and the same is hereby, so modified as to allow and permit defendant to construct and build temporary track and bridges over its line within the three mile limit of the original plan of the town of Pontotoc, solely and exclusively for the purpose of transporting and conveying its material over and across that part of its road situated within the three mile of the original plan of the town and not running through the same; to construct its road south of said depot as now located in the town of Pontotoc and beyond and south of said three mile limit without prejudice to either of the parties to this case."

Tr., pp. 33, 34.

It was from this order modifying the injunction that the Railroad Commission took the first appeal disclosed by the record herein, and on that appeal the Supreme Court of Mississippi laid down the doctrine above quoted sustaining the right of the Gulf & Chicago Rail*way* Company to establish its station and construct its line through any part of the extended town of Pontotoc, as being in compliance with the requirements of §187 of the Constitution of Mississippi.

The only other question before the Supreme Court of Mississippi upon the first appeal was the question as to whether the injunction should have been modified, and as to this the decision of the Court was:

"The public policy of the State, as defined by the adjudication of this Court, and as embodied in our statute laws, and being violated, and that the *orders* of the Railroad Commission to which these appellees (plaintiffs in error) are justly subject, are being disobeyed." The Court added: "Nor can we allow a violation of the law and ignoring of the rights of the public and a defiance of the *orders* of the Commission to continue, on the plea that an injunction preventing these things may operate prejudicially to the rights of the railroad corporations whose failure to discharge their legal obligations is itself the cause of the damage and the delay. The decree is reversed, the injunction reinstated, the cause remanded."

Tr., p. 161.

It will be noted that the only effect of this decision on the first appeal was to settle the contention regarding the order of the Railroad Commission as to the location of the depot within the original county seat site *adversely to the Commission*, and then to reinstate the injunction in the Chancery Court of Pontotoc County, *pendente lite*,

without determining the merits of the controversy, except by way of dictum.

This brings us to the consideration of the next question in controversy.

SECOND QUESTION: Had the State Railroad Commission of Mississippi power to make an order requiring the plaintiffs in error to abandon their line of railway and their station already built and constructed within and through the town of Pontotoc, and to build a new station and acquire new rights of way and extend their line Southwardly from the new station, thereby inflicting heavy loss upon the plaintiffs in error, increasing the length and cost of construction of their line of railway and placing a permanent burden upon them in the operation of their line of railway by reason of greater curvatures and higher grades incident to the required change?

THIRD QUESTION: If the State Railroad Commission had power to make and enforce such an order as that stated in the second question, was it due process of law for the Commission, without making such an order, to file the bill shown by the record in this cause in behalf of the State of Mississippi and the State Railroad Commission, and under that bill obtain a decree of the Chancery Court, affirmed by the decree of the Supreme Court of Mississippi upon the second appeal, compelling plaintiffs in error to abandon their established and located line of railway and the station already built and in use by them, and requiring them to relocate their line through the town of Pontotoc and build a new station therein at the depot site of the terminus of the old narrow gauge line, as originally constructed by the Gulf & Ship Island Railway Company?

Collateral and incident to this third question can such a proceeding be sustained either as within the power of the Railroad Commission to order, or of the courts to decree, upon the pretext that under the petition of the Gulf & Chicago Rail*way* Com-

pany for the consolidation of the Gulf & Chicago Rail*road* Company with it and the orders of the commission approving such consolidation, the plaintiffs in error had become and were bound to forever maintain the terminal station of the Gulf & Chicago Rail*road* Company in the town of Pontotoc as *the* station of the plaintiffs in error in said town, and to extend their line southward from such station, so as to make every foot of the old narrow gauge line, acquired under the consolidation, a permanent and perpetual part of the main line of the interstate railway then in process of construction from Decatur, Mississippi, to Middleton, Tennessee, under the charter of the complainant in error, the Gulf & Chicago Railway Company?

FOURTH QUESTION: Does the decree of the Chancery Court of Pontotoc County, Mississippi, as modified and affirmed by the opinion and decree of the Supreme Court of Mississippi from which this writ of error is prosecuted, have the necessary and inevitable effect of depriving plaintiffs in error of their property without due process of law, denying to them the equal protection of the laws, and at the same time place a burden upon and interfere with commerce between the States in violation of the provisions of the Constitution of the United States?

The first of the above four questions being already conclusively determined by the first decision of the Supreme Court of Mississippi in this case against the claims of the State Railroad Commission. The second, third and fourth questions above stated are now presented to this Court for its consideration.

The fourth question, just stated, is subject to subdivision as follows:

(*a*) Does the decree of the Supreme Court of Mississippi deprive the plaintiffs in error of their

property and vested contract rights without due process of law, and at the same time deprive them of the equal protection of the laws?

(*b*) Does the decree of the Supreme Court of Mississippi interfere with, burden and regulate commerce between the States in violation of § 8, Article I of the Constitution of the United States? (Tr., p. 165.)

FIFTH QUESTION: Are the statutes of the State of Mississippi, creating the Railroad Commission and conferring power and authority upon it, laws impairing the obligation of contracts under the construction placed upon such laws by the Supreme Court of Mississippi in this, that they are held to authorize actions and proceedings by the State Railroad Commission which have the effect of destroying existing charter and contract rights of the plaintiffs in error?

The consideration of these questions involves an examination of the Articles of Incorporation and Organization of:

1. The Gulf & Chicago Rail*road* Company, a corporation of the States of Mississippi and Tennessee; and

2. The plaintiff in error, the Gulf & Chicago Rail*way* Company, a corporation of Mississippi; and

3. The examination and construction of the petition for and order of consolidation, pursuant to which the Gulf & Chicago Rail*road* Company (the narrow gauge company) was consolidated with the plaintiff in error, the Gulf & Chicago Rail*way* Company in July, 1903.

Making this examination in the order just stated, we find:

GULF AND CHICAGO RAIL*road* ORGANIZATION: The bill alleges, and the answer admits, that the Gulf & Chicago Rail*road* Company was in existence at the time of the organization of the Gulf & Chicago Rail*way* Company, and then owned and operated a narrow gauge road "from the town of Pontotoc in the State of Mississippi, to the town of Middleton in the State of Tennessee," which road "was built about the year 1887."

Tr., p. 2, Original Bill, par. 3;
Tr., pp. 162, 163, Amended Answer, par. 3.

The bill further alleges "that the said narrow gauge line of railway was constructed by the Gulf & Ship Island Railroad Company about the year 1887.

Tr., p. 4, Original Bill, par. 9.

This allegation is not denied in the answer (Tr., pp. 168, 169, Amended Answer, par. 9), and therefore must be conceded to be true, but said paragraph 9 of the bill of complaint (Tr., p. 4), clearly alleges that it was the Gulf & Ship Island Railroad Company which extended said line of narrow gauge railway into the town of Pontotoc, located the same and acquired rights of way therefor.

There is no allegation in the bill of complaint of the consolidation of the Gulf & Ship Island Railroad Company with either the Gulf & Chicago Rail*road* Company or the Gulf & Chicago Rail*way* Company, nor is there any allegation in the bill of the assumption by the plaintiffs in error, or either of them, of the obligations, if any there were, of the Gulf & Ship Island Railroad Company to maintain its line of narrow gauge railway into, and its station, as constructed, in the town of Pontotoc. It is, however, alleged in the

bill that at the time of the organization of the plaintiff in error, Gulf & Chicago Rail*way* Company, the narrow gauge road was in existence and was then being operated from the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee, and that this narrow gauge road "was built about the year 1887, since which date it has been in existence and operated as aforesaid by the Gulf & Chicago Rail*road* Company and other corporations as hereinafter shown."

Tr., p. 2, Original Bill, par. 3.

It is not alleged in said paragraph or in the original bill that said narrow gauge line was owned by the said Gulf & Chicago Rail*road* Company, but only that said Company was operating the same, although it is alleged "that the said Gulf & Chicago Rail*road* Company was bound by its acquisition of the said narrow gauge line from Pontotoc, Mississippi, to Middleton, Tennessee, to continue and preserve intact throughout its entire line the said line of railroad from the town of Pontotoc, North" (Tr., p. 2, Original Bill, par. 4). So far as we have been able to find, there is nothing in the Articles of Incorporation of the Gulf & Chicago Rail*road* Company requiring it to preserve the narrow gauge line intact throughout its entire line and to continue to operate it forever to a particular terminal station in the town of Pontotoc, nor do the Article of Incorporation and Organization of the plaintiff in error, the Gulf & Chicago Rail*way* Company, show any obligation assumed by it in this behalf.

Tr., pp. 504-507, "Articles of Organization of the Gulf & Chicago Rail*road* Company."

Laws of Miss., 1890, Ch. 507, §§ 1 and 2; Tr., p. 462.

ARTICLES OF ORGANIZATION OF THE GULF & CHICAGO RAILWAY COMPANY (Tr., pp. 8-11): This, as

an examination of § 4073 of the Code of Mississippi of 1906 (§ 3572, Code of 1892) will show, was an organization of an entirely new company, not the organization of purchasers of an old line of railway and its franchises, but a corporate organization independent of any previous organization in all ways, and created for the specific purpose and with the specific authority to construct a line of railway from Decatur, Mississippi, to Jackson, Tennessee, through numerous counties in the State of Mississippi, including the County of Pontotoc.

Tr., p. 8, pars. 2, 3.

On the other hand, the Gulf & Chicago Rail*road* was organized by the purchasers at foreclosure sale of the line of railway properties and franchises of a prior railroad corporation of the State of Mississippi, known as the Ripley Railroad Company.

Tr., pp. 501-503, 503-507.

The organization of the Gulf & Chicago Rail*road* Company seems to have been under the provisions of § 4065, Mississippi Code of 1906 (§ 3565, Code of 1892).

Tr., pp. 503, 504.

We find nothing in the act to incorporate the Ripley Railroad Company or the act amending its act of incorporation binding it to forever maintain, without change, a narrow gauge line of railroad or any other kind of railroad into the town of Pontotoc, Mississippi, nor to fix and perpetually maintain a station at any given point in said town.

Tr., pp. 501-503.

We do not believe that the transcript discloses any charter of incorporation or articles of organization after foreclosure sale, or written document

of any kind or character binding upon either the Ripley Railroad Company or the Gulf & Chicago Rail*road* Company or the Gulf & Chicago Rail*way* Company, requiring either of said companies to establish and maintain a particular line and a particular station into or in the town of Pontotoc.

The only evidence in the record as to any relationship between the Gulf & Ship Island Railroad Company and the Ripley Railroad Company and its successor, the Gulf & Chicago Rail*road* Company, is that contained in an affidavit of J. W. Bell, made in connection with the injunction proceedings in this case, in which "he states on information believed true that the Gulf & Ship Island had some sort of arrangement between Col. W. C. Falkner and his associates who owned the Ripley Railroad Company, looking towards a consolidation of the two lines so that when completed the said Gulf & Ship Island Railroad Company should have a continuous line from some point on the Gulf of Mexico to the town of Middleton, Tennessee (Tr., pp. 119, 120, Aff. of J. W. Bell). There is evidence of the conveyance by deed of several rights of way to the Gulf & Ship Island Railroad Company, but nothing in any of these deeds or the deeds of trust executed by that Company bears even the remotest relation to any contract by that Railroad Company to build or maintain a particular line or establish and maintain permanently a particular station in the town of Pontotoc, Mississippi.

Tr., pp. 121-128;
Tr., pp. 138-140.

There are several affidavits in the record in which the affiants undertake to state what "understanding" there was at the time rights of way were acquired by the Gulf & Ship Island Railroad Company. The strongest affidavits in the record upon

this point seem to be the affidavits of O. C. Carr and C. L. Harris (Tr., pp. 95-99; 100-102). These affidavits purport to state the substance of an alleged written contract between the managers of the Gulf & Ship Island Railroad Company, and certain citizens of the town of Pontotoc who subscribed to a fund which was used to pay "the estimated additional cost to the railroad of running their line through the said town" (Tr., p. 96). This alleged written contract "was drawn up and signed by the said interested citizens, subscribers to the said fund on the one hand and the officers and managers of the said Railroad Company on the other (Tr., p. 96). Carr, in his affidavit, then proceeds to state the contents of this alleged written contract, but even assuming that his testimony by affidavit as to the contents of such a contract would be admissible for any purpose, he states in his affidavit nothing that under the facts disclosed by the record can be held to require or compel the plaintiff in error, the Gulf & Chicago Rail*way* Company, to abandon its chartered line of railway as built and established by it under its original charter, in order to maintain and extend, as a part of its main line, the narrow gauge line running from the north into the town of Pontotoc and originally constructed by the Gulf & Ship Island Railroad Company.

The affidavit of Harris shows that the Gulf & Chicago Rail*road* Company maintained and operated the narrow gauge line of railroad from the town of Middleton to the town of Pontotoc, and that that line was built to its terminus in the town of Pontotoc and the station erected thereat pursuant to negotiations with citizens of the town of Pontotoc who raised a fund to aid in the construction of the station and the acquisition of the station grounds, etc. (Tr., pp. 100-102).

Neither of these affidavits constituted a part of

the record upon the second appeal to the Supreme Court of Mississippi from the decree on which appeal the writ of error in this case is prosecuted. They were merely affidavits used in connection with the original injunction proceeding, and the facts stated by them are only referred to here for the purpose of directing the attention of the Court to the fact that even in the most partisan statements in behalf of the complainants below (defendants in error here) there was no contract or agreement disclosed binding upon the plaintiffs in error in the matter of the erection of a new depot upon the old narrow gauge depot site or the establishment of that particular part of the narrow gauge line in the town of Pontotoc running up to said old depot site as a part of the main or through line of the plaintiff in error, the Gulf & Chicago Rail*way* Company.

This brings us to the consideration of the petition for and order of consolidation under which the Gulf & Chicago Rail*road* Company, the narrow gauge line, was in July, 1903, consolidated with the Gulf & Chicago Rail*way* Company, one of the plaintiffs in error.

THE ORDER OF CONSOLIDATION: The petition for and order of consolidation are as follows:

"CONSOLIDATION OF THE GULF & CHICAGO RAILWAY COMPANY, OF MISSISSIPPI AND TENNESSEE.

"Messrs. McIntosh and Rich, General Attorneys for the Gulf & Chicago Rail*road* Company, presented the following application of said railroad company, to wit:

"Application is hereby made for the consent and approval of your honorable body to the consolidation of the Gulf & Chicago Rail*way* Company, a corporation under the laws of Mississippi; the Gulf & Chicago Rail*way* Company, a corporation under the laws of the State of Tennessee, and the Gulf & Chicago Rail*road* Company, a corporation under

the laws of Mississippi and Tennessee, pursuant to the articles of consolidation executed by the said corporation and on file in the office of the secretary of state of Mississippi, on the 27th day of January, 1903."

We respectfully submit that the consolidation should be validated and perfected for the following reasons, to-wit:

1. The consolidation of said corporations is fully authorized and permitted under the laws of the States of Mississippi and Tennessee.

2. Resolutions to enter into said consolidation were unanimously adopted by the respective boards of directors and by all the stockholders of said corporations.

3. The lines of railroad owned and operated and controlled and projected by the constituted companies composing said consolidation, were and are in no ways parallel or competing lines. On the contrary, the consolidation was effected for the single purpose of furthering the general plan of building and equipping and thereafter operating a single track, standard gauge line of railroad extending in a general northerly direction from the town of Decatur, Mississippi, to the city of Jackson, Tennessee. The present constructed narrow gauge railroad acquired from the Gulf & Chicago Railroad Company and running between the town of Pontotoc, Mississippi, and Middleton, Tennessee, will be broadened and standardized and will thereupon become a part of the line of railroad, operated by the consolidated corporation.

4. The construction and operation of this line of railroad will be of inestimable value to the rebuilding and development of that portion of the state which it will traverse and will result in permanent

and lasting benefit to the entire state of Mississippi.

We apprehend no serious objection will be interposed to the consummation of the consolidation, and we respectfully pray that an order be entered by this honorable body, fully ratifying, approving, confirming and perfecting the consolidation of said corporation in the manner set forth in said articles of consolidation as and of the 27th day of June.

Signed by McIntosh & Rich and John W. T. Faulkner.

ORDER.

The application of the Gulf & Chicago Railroad companies, organized under the laws of the State of Mississippi and Tennessee, for the permission to consolidate said corporations, coming on to be heard and it appearing to the satisfaction of the Commission that said corporations do not own or operate parallel or competing lines of railroad:

It is ordered by the Commission that permission to consolidate said corporation as prayed for in said application be and the same is hereby granted by the Commission, this 6th day of July, 1903.

I hereby certify that the above and foregoing is a true and correct copy of the petition presented by the attorneys for the Gulf & Chicago Railway Company, presented to the Mississippi Railroad Commission, on the 6th day of July, 1903, and the order thereon as the same appears on the page of Minute Book No. — in my office. This July 23, 1903.

.....

Sec'y. Mississippi Railroad Commission.

Filed August 3d, 1904.

W. T. FURR, Clerk.

By W. J. LYON, D. C.

Tr., pp. 11-13.

BRIEF.

I.

The federal questions presented by the record in this case confer jurisdiction upon this Court to review the decision of the Supreme Court of Mississippi.

Ante, pp. 6, 7, 8, 9, 18, 20, 21, 25; Tr., pp. 469-471.

This Court has jurisdiction to review the decision of the Supreme Court of Mississippi in this case, because the record clearly shows claims of constitutional rights under the Constitution of the United States expressly made by the plaintiffs in error in the Court below, any one of which, if sustained, would have required the Supreme Court of Mississippi to reverse the decree of the Chancery Court of Pontotoc County in this case.

Chicago, Burlington & Quincy Ry. Co. *vs.* Drainage Commissioners, 200 U. S., 561;

Grand Rapids & Indiana Ry. Co. *v.* Osborn, 193 U. S., 17.

Bridge Proprietors *v.* Hoboken Co., 1 Wall., 116, 142.

Yazoo, etc., R. Co. *v.* Adams, 180 U. S., 1, 15.

In this case, the original bill of complaint filed by the defendants in error in the Chancery Court of Pontotoc County (*Ante*, pp. 10-17) and the amended answer filed to said bill by the plaintiffs in error (*Ante*, pp. 17-26), clearly set up questions of constitutional rights arising under the Constitution of the United States, and therefore this Court

has jurisdiction to review the decision of the Supreme Court of Mississippi, even though the Supreme Court of Mississippi in its opinion failed to recognize the existence of the Federal rights claimed and sought to rest "the decision of the case on some ground of general or local law." Such a decision "necessarily has the same effect as if the claim of Federal right or immunity had been expressly denied."

C., B. & Q. Ry. *v.* Drainage Commissioners, 200 U. S., 561, 580, 581.
Bridge Proprietors *v.* Hoboken Co., 1 Wall., 116, 142.

"As the bill set up a contract with the State in a railway charter and also averred that such contract had been impaired by subsequent legislation, it was held that the bill presented a case under the Constitution of the United States, and that jurisdiction might be sustained upon that ground alone."

Illinois Central Ry. Co. *v.* Adams, 180 U. S., 28.

"Where the determination by the State Court of an alleged ground of estoppel, embodied in a ground of demurrer to an answer, necessarily involves a consideration of the claim set up in the answer of a contract protected by the Constitution of the United States, a Federal question arises on the record, which gives this Court jurisdiction."

Grand Rapids, etc., Ry. Co. *v.* Osborn, 193 U. S., 17.

"The claim under the Constitution was distinctly set up in the bill and was insisted on at every stage. The Court could not have decided as it did without overruling that claim, so that the jurisdiction of this Court is clear although it was denied."

Otis Company *v.* Ludlow Co., 201 U. S., pp. 140, 150.

II.

The decision and decree of the Supreme Court of Mississippi, although avowedly placed upon a non-federal ground, actually deprives the plaintiffs in error of their property without due process of law, and denies to them the equal protection of the laws by conferring upon the State Railroad Commission powers and authority not granted to it by the statutes of the State of Mississippi.

The decision of the Supreme Court of Mississippi has the effect of depriving plaintiffs in error of their property without due process of law and denying to them the equal protection of the laws in this, that it sustains a claim of power and authority exercised by the State Railroad Commission compelling the plaintiffs in error to abandon their line of railway through the town of Pontotoc, as located, graded and in operation, and their depot as built and in use, and to acquire rights of way and locate and construct a new line through said town.

Tr., p. 452;
Post, pp. 60-64.

The Railroad Commission of the State of Mississippi "is a mere administrative agency of the State."

Mississippi R. R. Commission *v.* Illinois Central Railroad, 203 U. S., 335, 341.

The Commission has no powers beyond those given it by statute and is strictly limited in its exercise of power by the laws creating it.

Railroad Commissioners *v.* Oregon, etc., R. Co., 17 Ore., 65; s. c., 2 L. R. A., 195.

Nashville, etc., R. Co. *v.* State, 137 Ala., 439.

The statutes of the State of Mississippi forbid the consolidation of parallel and competing lines of railroad and forbid the Railroad Commission to consent to the consolidation of such lines and confer no power upon the Commission to enter into contracts whereby such a consolidation of competing lines can be effected.

Post, pp. 64-67.

The orders of railroad commissioners are not contracts.

New Haven, etc., R. Co. *v.* Hammersly, 104 U. S., 1.

Hence the order of the State Railroad Commission of Mississippi permitting the consolidation of the narrow-gauge line with the Gulf & Chicago Railway Company (Tr., p. 13, *ante*, p. 42) was not a contract. (*Post*, pp. 67-72.) That such order might be revoked if obtained upon false representations or for improper purposes is possible, but the order itself cannot be transmuted into a contract and the contract enforced by confiscating the property of the plaintiffs in error, and upon the mere opinion of the Supreme Court of Mississippi that such order is a contract, requiring the Gulf & Chicago Railway Company to abandon its line of railway as legally located through the town of Pontotoc and to acquire new rights of way and build a new line of railway along a different route.

This is not due process of law, but is a denial of the equal protection of the laws. Surely confiscation is not control and robbery is not regulation.

III.

The decision of the Supreme Court of Mississippi deprives the Gulf & Chicago Railway Company, plaintiff in error, of its property without due process of law, and of its vested contract rights in this, that Chapter 143 of the Laws of Mississippi of 1906 is a valid exercise of legislative power constituting a contract between the State of Mississippi and the said plaintiff in error and the decision of the Supreme Court of Mississippi deprives said plaintiff in error of its vested rights under said statutory contract.

Tr., p. 452; pp. 471-473;
Post, pp. 85-92.

"This court has adjudged that the provisions of the XIVth amendment refer to all the instrumentalities of the State, to its legislative, executive and judicial authorities."

Blake *v.* McClung, 172 U. S., 239, 260.
Ex parte Virginia, 100 U. S., 339.
Scott *v.* McNeill, 154 U. S., 34, 45.

"Nor is the contention that the Railroad Company has been deprived of its property without due process of law entirely met by the suggestion that it had due notice of the proceedings for condemnation, appeared in court and was admitted to make defense. * * * But a State may not, by any of its agencies, disregard the prohibitions of the XIVth amendment. Its judicial authorities may keep within the letter of the statute providing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard and yet it may be that its final action would be inconsistent with that amendment. In determining what is due process of law, regard must be had to substance, not to form."

Chicago, Burlington, etc., R. Co. *v.* Chicago, 166 U. S., 226, 234-235.

Chapter 143 of the Laws of Mississippi of 1906, known as the "Stegall Bill," is a contract upon sufficient consideration between the State of Mississippi and the Gulf & Chicago Rail*way* Company, plaintiff in error, settling and disposing of the controversy between the State Railroad Commission of Mississippi and the plaintiffs in error, and the opinion of the Supreme Court of Mississippi that said act is unconstitutional under § 87 of the Constitution of Mississippi is not conclusive upon this court, and this court should now adjudge the law to be that the "Stegall Bill" was and is in limitation and qualification of the laws conferring authority and jurisdiction upon the Railroad Commission of the State of Mississippi and was and is a contract between the State of Mississippi and the plaintiff in error, Gulf & Chicago Rail*way* Company, and was and is a grant of franchises and contract rights for a sufficient consideration to the said plaintiff in error, and that under said legislative contract the judgment and

decree of the Supreme Court of Mississippi in this case is erroneous and should be reversed.

Douglas *v.* County of Pike, 101 U. S., 677, 686, 687.
Edwards *v.* Kerzey, 96 U. S., 595.

In *Gelpcke* v. *Dubuque*, while recognizing the general rule that this Court will follow the decisions of the highest Courts of the several States, "giving constructions to the laws and constitutions of their own States," yet Mr. Justice Waite, delivering the opinion of the Court, added: "But there have been heretofore in the judicial history of this Court, *as doubtless there will be hereafter*, many exceptional cases. We shall never immolate truth, justice and the law because a State tribunal has erected the altar and decreed the sacrifice."

Gelpcke *v.* Dubuque, 1 Wall., 175, 206, 207.

"It is argued that inasmuch as this Court adopts the construction given by the State Courts to their own constitution and laws, we ought to follow the decisions in Mississippi and declare the contract before us to be void, notwithstanding the case of *Groves* v. *Slaughter*. * * * It will be seen by a reference to an opinion delivered in the case of *Groves* v. *Slaughter* that the Court was satisfied not only that the construction it then placed on the constitution of Mississippi was the true one, but that it conformed to the construction *upon which the Legislature of the State had acted*. * * * Acting under the opinion thus deliberately given by this Court, we can hardly be required, by any comity or respect for the State Courts, to surrender our judgments to decisions since made in the State and declare contracts to be void which, upon full consideration, we have pronounced to be valid. * * * We ought not to give them (State

Court decisions) a retroactive effect and allow them to render invalid contracts entered into with citizens of other States, which in the judgment of this Court were lawfully made."

Rowan *v.* Runnels, 5 How., 134, 139.

"If the Legislature possess the power to authorize an act to be done, it can, by a retrospective act, cure the evils which existed because the power thus conferred has been *irregularly* executed."

Thompson *v.* Lee County, 3 Wall., 327.

In the leading case of *Olcott against the Supervisors*, that great lawyer, Matt H. Carpenter, *arguendo*, said:

"The broad principle ought to be declared by this court that *no* State Court decision affecting the validity of a contract *made after the contract was entered into*, is conclusive upon the Federal Courts. All the decisions in this Court are consistent with this principle, but the principle itself has not been expressly declared, yet in no way can injustice * * * be prevented but by planting the doctrine upon its proper foundation and saying the decisions of the State Courts pronounced *subsequent to this contract* are not conclusive upon the Federal Courts. If they are, the machinery of a double judiciary, State and Federal, is a mockery and a snare."

Olcott *v.* Supervisors, 16 Wall., 678, 682.

Thereupon, in the case just cited, Mr. Justice Strong, delivering the opinion of the Court, said:

"Whether the Act of Assembly of the State of Wisconsin, approved April 10, 1867, under which the county orders, or promissory notes, sued upon

in this case, were issued, was a lawful exercise of Constitutional power, is the only question in the case." (16 Wall., 688.) "At the outset we are met by the fact that the Supreme Court of the State has decided the act was unauthorized by the Constitution. * * * If that decision is binding upon the Federal Courts, if it has established a rule which we are under obligations to follow, the matter is settled." (16 Wall., 689.)

The conclusion of the Court was, the question involved not being one of local law, or of the mere interpretation of the State Constitution, but one involving the validity of a contract authorized by legislative action, with the validity of which prior decisions of the Supreme Court of Wisconsin, construing the Constitution and laws of that State, did not seem to be in conflict, that this Court would determine the constitutionality of the legislative Act and the Act was sustained as "a proper exercise of legislative authority."

Olcott *v.* The Supervisors, 16 Wall., 678.

We submit that the doctrine enunciated in the argument of *Mr. Carpenter* in Olcott against The Supervisors is the true doctrine applicable to such a case as the one now at bar, and that this Court ought to have no hesitation in adopting it as sound.

Besides the question whether a general law could be made applicable to the subject matter of this special act was a matter for legislative not Judicial determination.

Guthrie National Bank *v.* Guthrie, 173 U. S., 528, 533.

IV.

The Gulf & Chicago Railway Company having located its line through the town of Pontotoc and established its station therein in strict conformity to Sec. 187 of the Constitution of Mississippi and in accordance with its line between its terminal points as established by its charter, the State Railroad Commission, and the Courts of Mississippi are without power to compel it to abandon that line and that station and establish a different line over a different route and a different station at a different point.

It is the settled law of this case—*res judicata*—that plaintiff in error, the Gulf & Chicago Railway Company, had a right to construct and operate its line and to build and maintain a depot upon its line through the town of Pontotoc in the County of Pontotoc over the rights of way acquired by it in so far as § 187 of the Constitution of the State of Mississippi is concerned.

State of Mississippi *v.* Mobile, Jackson & Kansas City R. Co., 86 Miss., 172.

Tr., pp. 150-154, Opinion of the Court on first appeal, by Truly, *J.*

This proposition being thus judicially established in this case, the power of the State Railroad Commission over the line and station of the Gulf & Chicago Railway Company in the town of Pontoc was exhausted and the Supreme Court of Mississippi, upon the final appeal, by its decision and

decree affirming the decree of the Chancery Court of Pontotoc County, deprived the plaintiffs in error of their property without due process of law, because although the proceeding was conducted under the guise of a judicial controversy, neither the State of Mississippi nor its Railroad Commission had authority to invoke the judicial power in confiscation of the property rights of the plaintiffs in error.

Statutes "providing for enforcement by proceedings in chancery of the orders of the commission, refer solely to the duties and powers enumerated" in the statutory provisions under which a Railroad Commission is created and exists.

Nashville, etc., Ry. Co. *v.* State, 137 Ala., 439.

The invention of a contract between the Gulf & Chicago Rail*way* Company and the State Railroad Commission as a part of the order consenting to the consolidation of the narrow gauge road with the Gulf & Chicago Rail*way* Company, in order to sustain the jurisdiction of the Court and maintain the power of the Commission, may be ingenious, but it is not, as we submit, due process of law.

V.

The Supreme Court of Mississippi in its final opinion in this case rests its decree entirely and alone upon an alleged contract in the order of consolidation. As such a contract was beyond the power of the Railroad Commission to enter into, the decree of the Supreme Court predicated upon it is a taking of property without due process of law and a de-

nial of the equal protection of the laws to the plaintiffs in error.

It also follows that all other propositions relied upon by the defendants in error in their bill of complaint and constituting the basis of the decree in the Chancery Court of Pontotoc County, are denied and rejected by the decision of the Supreme Court of Mississippi.

Tr., pp. 452-455, Final opinion.

In the course of the opinion just referred to the Supreme Court of Mississippi thus disposes of all other questions sought to be raised:

> "We have nothing to say in this opinion about the depot or its location. * * * 'Where its new depot shall be located, in what portion of the town, is not a matter involved in this litigation and is a question for future discussion between the appellees and the Railroad Commission.'"
>
> Tr., p. 452.

And again:

> "The former opinion expressly waived any consideration as to 'what are the subsisting legal rights and obligations arising under the alleged written contract as to the original location of the depot,' and we now further expressly decline to render any decision as regards the rights of those citizens of the town of Pontotoc who contributed the $5,500 to insist upon a perpetual maintenance of the depot at the old location."
>
> Tr., p. 453.

And again:

> "Nor do we intimate anything as to their right to institute damage suits."
>
> Tr., p. 453.

And again:

> "Nor do we make any decision as to whether in this suit by the State through its

> Railroad Commission, the rights of private parties could be at all properly considered; we dismiss it and all of these three propositions absolutely from our consideration."
>
> Tr., p. 453.

And thereafter the Court bases its decree of affirmance absolutely, solely and entirely on the alleged "obligation voluntarily entered into by the appellants with the Railroad Commission that if they should be permitted to consolidate they would broaden and standardize the then existing narrow gauge railroad and make it a part of their main line."

Tr, pp. 452, 453, 454.

The Court adds:

> "That and that only is the core of this contention and that, and that precisely, is what we deal with and decide in this case."
>
> Tr., p. 452.

It follows that if the decree of affirmance, based on this ground alone, necessarily deprives the plaintiffs in error of their property without due process of law, creates for them a contract which they never made and deprives them of their vested contract and charter rights, then the case comes within the jurisdiction of this Court and the judgment and decree of the Supreme Court of Mississippi should be reversed. In the argument which follows, we have discussed this proposition in detail, and to that argument we refer the Court.

VI.

The laws of the State of Mississippi creating the State Railroad Commission and conferring powers upon it, if such powers go to the extent es-

tablished by the opinion of the Supreme Court of Mississippi in this case, are laws impairing the obligation of contracts in this, that Sec. 8 of the "Act to Incorporate the Ripley Railroad Company" conferred upon that company and upon the Gulf & Chicago Railroad Company as its legal successor the right to change the location of its line through the town of Pontotoc and under the decision of the Supreme Court of Mississippi holding that the Railroad Commission under the Railroad Commission Laws had power to abrogate this right, the laws creating the Railroad Commission as so construed are laws impairing the obligation of contracts.

Tr., pp. 501, 502, Act to Incorporate the Ripley Railroad Company, § 8.

Tr., pp. 504-507, Articles of Organization of the Gulf & Chicago Railroad Co., Tr., pp. 503, 504.

Ch. 25, Laws of Mississippi of 1882: "An Act to Authorize Purchase of Railroads under Execution or Decrees of Foreclosure; to Organize as Incorporated Companies and for other Purposes."

Laws of Miss. of 1890, Ch. 507: "An Act to Ratify the Incorporation of the Gulf & Chicago Railroad Co. and for other purposes," §§ 1 and 2.

The Act just cited provides "that the Gulf & Chicago Railroad Company be, and it is hereby, au-

thorized to acquire by purchase any railroad connection with its railroad so as to extend the same southwardly and centrally as nearly as conveniently may be through the State to any point desired across any existing lines of railroad in the State or *effect junctions* therewith, and that any and all purchases of any railroads heretofore made be, and the same hereby are, validated."

Laws of Miss., 1890, Ch. 507, § 2.
Tr., pp. 461-462.

The point here insisted upon was made in the Supreme Court of Mississippi, and that Court in its opinion attempts to dispose of it as follows, saying:

> "They did not stand in the court below on this provision of their charter; they did not, in the inception of this matter, when they filed their petition for consolidation, invoke this section 8 as authority for 'changing' the line of the narrow-gauge; deflecting as shown by the evidence in this case it has been deflected. That would have presented a very different proposition; but they sought the change actually and precisely and only upon the conditions upon which the right to consolidate was granted them. It would be inequitable in the highest degree on their part to obtain the consent of the State, through its Railroad Commission, to consolidate upon the express agreement to broaden and standardize the narrow-gauge railroad in its entire length, and make it a part of their main line of railroad, and rest upon this alone, and here, for the first time, upon the second appeal to this court, to say, notwithstanding all this, that they had power, under said section 8 to 'change the line of the narrow gauge railroad as they might desire simply under said section 8. If section 8 gave them any such power—which we do not now decide—they have assuredly waived, and are estopped to invoke it, by their conduct in this matter."

Tr. pp. 454-455, Opinion.

Surely this Court will not sanction the conclusion of the Supreme Court of Mississippi upon this point by holding with that Court that plaintiffs in error have waived and are estopped from invoking this charter right antedating by many years the Railroad Commission Acts of Mississippi authorizing the Ripley Railroad Company and its successor, the Gulf & Chicago Rail*road* Company, to change and alter its line of railway for the purpose of extending the same southwardly from the town of Pontotoc. On this proposition we are justified in insisting that if the Railroad Commission Acts do confer upon the Commission the powers claimed for it by the Supreme Court of Mississippi, then the Railroad Commission Acts, in conferring such power, impair the obligations of the contract under which the Gulf & Chicago Railroad Company and its predecessor, the Ripley Railroad Company, were organized and had their corporate existence.

VII.

In support and extension of this brief and the foregoing propositions of law, we invite the attention of the Court to the following Argument.

ARGUMENT FOR PLAINTIFFS IN ERROR.

I.

Federal Questions Raised.

The contention of the plaintiffs in error is that by the acts of the Mississippi Railroad Commission and the decree of the Chancery Court of Pontotoc County, as affirmed by the decree of the Supreme Court of Mississippi, there has been an interference with and regulation of interstate commerce in contravention of the Constitution of the United States, and a taking and confiscation of the property of the plaintiffs in error without due process of law, involving a denial of the equal protection of the laws.

It is also contended that the Statutes of the State of Mississippi creating the State Railroad Commission and conferring powers upon it are, as construed by the Supreme Court of Mississippi in this case, laws impairing the obligation of contracts and divesting the plaintiffs in error of their contracts and charter rights without due process of law.

The amended answer of the plaintiffs in error (defendants below) and the assignment of errors made by them in the Supreme Court of Mississippi directly raise the first two Federal questions just stated.

Tr., p. 165.

Tr., pp. 449, 450, Assignments of Error 4 and 5 in Supreme Court of Mississippi.

Ante, pp. 6-7; 20-21.

The third Federal question above stated, involving the contention that the obligation of contracts has been impaired, was also expressly raised in the Supreme Court of Mississippi.

Tr., p. 449; Assignment of Errors, Assignment 4.

It is manifest from the questions involved, pleadings of the parties, and the facts disclosed by the record, that the Federal questions above stated were at issue and in controversy at every stage of this case; that they were questions essential and necessary to the correct decision of the case, and that any decision ignoring these Federal questions and seeking to place the determination of this case on non-Federal grounds, is a mere sham and pretext, and one which should be disregarded by this Court in the decision of this case upon its merits on the writ of error.

Bridge Proprietors *vs.* Hoboken Company, 1 Wall., 116, 142.

II.

STATUTORY POWERS OF RAILROAD COMMISSION.

The "Railroad Commission of Mississippi is not, as has been determined by the highest court of that State, a court, but a mere administrative agency of the State."

Mississippi R. R. Commission *v.* Illinois Central R. R., 203 U. S., 335.

The powers and authority of the Railroad Commission are such only as are conferred upon them by Statute.

"The authority of the Commission to interfere with the railroad is based on the Statutes of Mississippi."

Mississippi R. R. Commission *v.* Illinois Cent. R. R., 203 U. S., 342.

It is provided by statute that the Commission "shall keep regular minutes of its proceedings, which shall be a public record, and all orders, findings and acts of the commission shall be entered on the minutes."

Mississippi Code of 1906, Ch. 139, § 4829; Code of 1892, § 4277.

It is also provided that "the acts of the Commission shall be authenticated by its seal."

Code of Mississippi, 1906, § 4830;
Code of 1892, § 4278.

It is also provided that "the commission shall keep a docket of petitions and complaints which shall be entered in regular order; and the docket shall be called at each regular meeting of the board and the cases thereon disposed of, or, if necessary, continued until the next meeting."

Code of Mississippi of 1906, § 4832;
Code of 1892, § 4280.

"In * * * cases of complaint against a railroad, or other common carrier, the commission shall give the party complained of such reasonable notice as it may adjudge proper, but not less than five days, * * * but where anything is required to be done, such reasonable time must be allowed therefor as the commission shall deem proper."

Code of Mississippi, 1906, § 4833;
Code of 1892, § 4281.

It is further provided that "all orders and decisions of the commission affecting any railroad or other common carrier shall be certified to the railroad or other carrier or to some officer, agent or employe, and served or executed in the same manner as notices to them are required to be served or executed."

Code of Mississippi, 1906, § 4835;
Code of 1892, § 4283.

It is further provided that "all findings of the commission and the determination of every matter by it shall be made in writing and placed upon its minutes and proof thereof shall be made by a copy

of the same duly certified by the secretary under the seal of the commission."

Code of Mississippi, 1906, § 4836; Code of 1892, § 4284.

The Commission is given supervision of the charges fixed by railroads and common carriers within its authority (Code of Mississippi of 1906, § 4834; Code of 1892, § 4291) and there are numerous provisions giving it power in the matter of rebates, free passes, tariffs, schedules of tariffs, etc.

Code of Mississippi of 1906, §§ 4844-4853; Code of 1892, §§ 4292, 4301.

The provisions in relation to the powers of the Railroad Commission over the location and maintenance of depots, in so far as they are material to this case, are as follows:

"NECESSARY DEPOTS TO BE MAINTAINED.—Every railroad shall establish and maintain such depots as shall be reasonably necessary for the public convenience, and shall stop such of the passenger and freight trains at any depot as the business and public convenience shall require. And every railroad shall establish and maintain a depot within the corporate limits of every incorporated city, town or village through which said railroad passes; and the commission may cause all passenger trains to permit passengers to get on and off in the city at any place other than at the depot, where it is for the convenience of the traveling public. And it shall be unlawful for any railroad to abolish or disuse any depot when once established, or to fail to keep up the same and to regularly stop the trains thereat, without the consent of the commission."

Code of Mississippi of 1906, § 4854; Code of 1892, § 4302.

"LOCATION OF STATION HOUSES.—Where the site selected by the railroad officials for depot building

or a station house, erected or to be erected, is inconvenient or inaccessible, the commission may order the erection of a new building or station house, and designate its site or location; but every depot must be located with due regard to the interest of the railroad and the public convenience."

Code of Mississippi of 1906, § 4863;
Code of 1892, § 4309.

"INSUFFICIENT DEPOT FACILITIES.—The commission may require every railroad to provide sufficient depot, storage and platform facilities; and shall hear all complaints that may be presented, in writing, as to insufficient depot, storage, or platform facilities for freight, and shall make such order thereon to secure the same as the facts and the public convenience may warrant."

Code of Mississippi of 1906, § 4865;
Code of 1892, § 4311.

The statute further provides how appeals may be taken from orders of the Commission, direct to the Supreme Court of Mississippi, such statutory provision being as follows:

"WHEN APPEALS MAY BE TAKEN FROM THE COMMISSION.—Whenever the commission shall make an order, the validity of which shall be disputed upon the ground that the commission was without power to make it, or whenever the commission shall refuse to make an order asked for upon the ground that it was without power to make it, any person feeling aggrieved by the action of the commission may appeal therefrom directly to the supreme court. Upon such appeal the supreme court shall decide nothing except as to the power of the commission in the premises, and all other questions which may be involved shall remain unaffected thereby. In order to affect such appeal, bills of exception may be taken, which shall be signed by the presiding

officer of the commission, and it need only contain such statements of fact as may be necessary to present for the consideration of the supreme court the question as to the power of the commission in the premises."

Code of Mississippi of 1906, § 4890.

III.

CONSOLIDATION—POWERS OF COMMISSION OVER.

The Commission has no power to enter into any contract or make any agreements regarding the consolidation of competing lines of railroad.

The Railroad Law of the State of Mississippi provides: "It shall be unlawful for any railroad company to consolidate with a parallel or competing railroad company or to allow its affairs to be in any manner managed, regulated or controlled by any such parallel or competing railroad company. * * * And it shall further be unlawful for competing railroad companies operating parallel lines of road, within twenty miles of each other, to lease or purchase, directly or indirectly, the opposing line, or any part thereof, or any interest therein. Such contracts, no matter in whose name made, are hereby prohibited under the penalties in this section provided."

Code of Mississippi of 1906, § 4057;
Code of 1892, § 3560.

Under this law, it is manifest that the Railroad Commission has no power to consent to the consolidation of competing roads or make any order permitting the same, and the only power conferred upon the Railroad Commission by the Statutes of Mississippi, in relation to the consolidation of railroads, is as follows:

Section 4079 of the Code of Mississippi of 1906 (§ 3577, Code of 1892) provides that: "Every

railroad corporation organized under the provisions of this chapter shall have and exercise the following powers, rights and privileges, viz.: * * *

"*Third.* To build and construct and thereafter to use, operate, own, sell and enjoy *the railroad as specified and defined in the application of the projectors for its creation and organization* with one or more tracks, and to construct and operate such branches, spurs and laterals thereto as may be necessary or proper to develop the country through which its main line may extend."

Code of Mississippi of 1906, § 4082;
Code of 1892, § 3580.

"*Tenth.* To consolidate with any other railroad company in or out of this state *with the consent of the Railroad Commission* upon such terms *as the consolidating companies may agree upon;* but a consolidation shall not be made with a parallel or a competing road."

Code of Mississippi of 1906, § 4089;
Code of 1892, § 3587.

"*Eleventh.* To lease its railroad and all of its property and franchise rights, powers, privileges and immunities then owned or thereafter to be acquired, or to lease other railroads in or out of this State *not in either case parallel or competing lines for a term of years.*"

Code of Mississippi of 1906, § 4090;
Code of 1892, § 3588.

"*Fourteenth.* To enter upon all lands and to survey, lay out and construct a railroad thereon; but before so doing it must contract and agree with the owner upon the price to be paid for the land and its use, or with the administrator, executor or guardian in case the owner be dead, be an infant or person of unsound mind; or it must condemn and ac-

quire the same if an agreement cannot be made for the exercise of the right of eminent domain as provided in the chapter on that subject."

Code of Mississippi of 1906, § 4093;
Code of 1892, § 3591.

"*Sixteenth.* To agree and contract, or to exercise the right of eminent domain to condemn lands necessary for depots or other necessary and proper purposes."

Code of Mississippi of 1906, § 4095;
Code of 1892, § 3593.

"*Seventeenth.* To cross, intersect, join or unite its railroad with any other railroad heretofore or hereafter constructed at any points on their routes, and upon the ground of such other railroad company, with the necessary and proper turnouts, sidings, switches and other conveniences, and to exercise the right of eminent domain for that purpose."

Code of Mississippi of 1906, § 4096;
Code of 1892, § 3594.

"*Twentieth.* To do and perform all and everything necessary to the exercise of the powers expressed, and to the accomplishment of the objects of its creation and organization, including the exercise of the right of eminent domain as provided in the chapter on that subject."

Code of Mississippi of 1906, § 4099;
Code of 1892, § 3597.

In addition to these general powers, it is expressly provided that "a railroad company chartered under this chapter may, after beginning the construction of its road, make all necessary or proper changes in its course or direction from that specified in the application for its incorporation,

and may, by the consent of the railroad commission, change its *terminal point.*"

Code of Mississippi of 1906, § 4101;
Code of 1892, § 3599.

V.

The Consolidation Order.

In paragraph numbered "Tenth" above, the provision is that a railroad company, with the consent of the railroad commission may consolidate with another company "*upon such terms as the consolidating companies may agree upon*"; but the commissioners are by this section expressly prohibited from consenting to the consolidation of parallel or competing roads. (Code of Miss., 1906, Sec. 4089; Code 1892, Sec. 3587.) It inevitably follows that the only real power or duty of the railroad commission in the matter of consenting to consolidations is to determine that such consolidations are not of parallel or competing roads, and the commission have nothing whatever to do with the terms of the consolidation. The terms of the consolidation are matters of agreement between the consolidating roads. The right to consolidate is dependent upon the roads being neither parallel nor competing. The commission have power to determine whether they are parallel or competing, or not, but no power whatever to determine, decide, agree or contract what the basis of consolidation as between the two companies shall be, it being determined that they are neither competing nor parallel roads. Hence, the petition of the Gulf & Chicago Rail*road* Company for approval of its consolidation with the Gulf & Chicago Rail*way* Company, and the order of the commission thereon, approving said consolidation, "it appearing to the satisfaction of the commission that said corporations do not own or operate parallel or competing lines

of railroad," was not an agreement or a contract of any kind between the railroad commission and the consolidating roads but merely an official finding that the two roads came within the necessary statutory requirements; and the attempt of the Supreme Court of Mississippi to base its decision and decree upon the ground that the petition and order constituted a contract binding upon the plaintiffs in error, is a mere pretext intended to avoid the determination of the Federal questions arising in this case and to place the decision upon a non-Federal ground.

The language of the Supreme Court of Mississippi in its opinion in this case upon this point is as follows:

> "It is nothing short of inequitable on the part of the appellant, having gotten the consent of the railroad commission to consolidate upon these express conditions, to violate the conditions and refuse to broaden and standardize the entire narrow gauge road and make it a part of the main line of said corporation, and it is upon this ground, and this ground alone, that we now hold that the decree of the Chancellor should be affirmed."
>
> Transcript, page 452, Opinion.

The Court further says:

> "These appellants are bound by their sworn obligation, solemnly entered into as stated above, to broaden and standardize the narrow gauge road and to make it a part of the main line. The depot is a matter with which we have no concern."
>
> Transcript, pages 452-3, Opinion.

The Court added, endeavoring to strengthen its position upon this point:

> "If, in order to obtain the consent of the State, through its railroad commission, ap-

> pellants obligated themselves, in their petition for consolidation, to broaden and standardize the said narrow gauge railroad and make it a part of the main line of its road, it is too late now to attempt to recede from these express conditions; too late to accept the benefits of consolidation and repudiate the solemn pledges made by appellants that they would broaden and standardize the said narrow gauge and make it a part of its main line."
>
> Transcript, page 454, Opinion.

And to emphasize this point of view they further speak of the "solemn agreement above set forth, according to the conditions of which the right to consolidate was granted" (Transcript, page 454, Opinion.)

It is only necessary to read the plain language of the statute as above quoted to show that the railroad commission had no power to make any agreement whatsoever in relation to the terms of consolidation, nor could the commission exercise any power whatsoever to consent to the consolidation of parallel or competing lines. Hence, there was and could be no agreement between the commission and the plaintiffs in error, or either of them, under the petition for leave to consolidate and the order of consolidation.

Indeed the Act of the Legislature of Mississippi ratifying the incorporation of the Gulf & Chicago Rail*road* Company as the successor of the Ripley Railroad Company expressly provided that the Gulf & Chicago Rail*road* Company "shall never consolidate with any parallel or competing company."

Laws of Mississippi, 1890, Ch. 507.

Again, the Supreme Court of Mississippi in its opinion throughout speaks of the petition for consolidation as requiring the Gulf & Chicago Rail*way* Company "to broaden and standardize the

said narrow gauge railroad and make it a part of the *main* line of its road," and refers to the petition as "the solemn pledges made by the appellant that it would broaden and standardize the said narrow gauge and make it a part of its *main* line" (Transcript, page 454, Opinion).

The petition for leave to consolidate will be searched in vain for any language implying that the entire narrow gauge line, exactly as it stood, would be broadened and standardized and made a part of the *main line* of the Gulf & Chicago Rail*way* Company. The language of the petition is that "the consolidation was effected for the single purpose of furthering the *general plan* of building and equipping and thereafter operating a single track standard gauge line of railroad extending in a general northerly direction from the town of Decatur, Mississippi, to the city of Jackson, Tennessee. The present constructed narrow guage railroad acquired from the Gulf & Chicago Rail*road* Company and running between the town of Pontotoc, Mississippi, and Middleton, Tennessee, will be broadened and standardized and will thereupon become a part of *the line* of railroad operated by the consolidated corporation" (Transcript, page 12, Application for Consent of Commission).

There is not a word in either the application to the railroad commission for approval of the consolidation already agreed upon between the two railroad companies, or in the order approving that consolidation, with reference to the operation of the narrow gauge in all its parts as a part of the *main* line of the Gulf & Chicago Rail*way* Company. This term is imported into the application by the language of the opinion of the Supreme Court of Mississippi. It has no existence in the application itself, or in the order approving the consolidation. On the contrary, the application recites that the consolidation has been made "pur-

suant to the articles of consolidation executed by the said corporation and on file in the office of the Secretary of State of Mississippi, on the 27th day of January, 1903," and the application further recited, "the consolidation of said corporations is fully authorized and permitted under the laws of the States of Mississippi and Tennessee" and this is followed by the averment in the application that the "lines of railroad owned and operated, and controlled and projected, by the constituent companies comprising said consolidation were and (are) in no wise parallel or competing lines" (Transcript, page 12, Application for Approval of Commission).

There is no hint or suggestion in the application of any agreement to be made, or obligation to be incurred, by the applicants to and with the railroad commission or the State of Mississippi.

The application refers to the articles of consolidation and agreement between the constituent companies effecting the consolidation, and in this agreement between the two companies, the railroad commission and the State of Mississippi have no part, and over it they have no jurisdiction. The only question for the commission was whether the representation in the petition that the consolidating roads were neither parallel nor competing was true, and this was the only question that the commission by its order determined, viz., that it appearing to the satisfaction of the commission "that said corporations do not own or operate parallel or competing lines of railroad," it is ordered by the commission that permission to consolidate "be and the same is hereby granted by the Commission this 6th day of July, 1903" (Transcript, pages 12 and 13, Application for Consolidation and Order).

Can this Court, by any stretch of ingenuity, spell out of this application and this order of the railroad commission of Mississippi permitting this

consolidation, an obligation, an agreement and a binding contract sufficient to justify the confiscation of the property of the plaintiffs in error, an interference with the conduct of their business as interstate carriers, and a destruction of their vested contract rights?

How the plaintiffs in error are to have their property confiscated and be deprived of their vested contract rights under the decision and the decree of the Supreme Court of Mississippi in this case, will be readily seen upon a consideration of the proceedings of the plaintiffs in error subsequent to the order of the railroad commission approving the consolidation as above set forth. A reference to the blue print map affixed to this brief will enable the Court to readily apprehend the exact questions in controversy.

VI.

Article 187, Constitution of Mississippi: The Depot Question.

The narrow gauge road came into the County and Town of Pontotoc from the north. Reaching the town limits, it extended in to a point on the line in the old townsite and there terminated at a small depot or station. That depot, as the record shows, was destroyed by fire some time in the year 1902. The Gulf & Chicago Railway Company was incorporated in June, 1903, with the object and purpose of building a line of interstate railway between Decatur, Mississippi, and Jackson, Tennessee (*ante*, page ....; Transcript, page ....). It was not incorporated to build a line to the town of Pontotoc, Mississippi, but incidentally its charter provided that its line should be constructed through numerous counties in the State of Mississippi, and among others through the County of Pontotoc. It is not disputed that at or about

the time of the consolidation of the Gulf & Chicago Rail*road* Company with the Gulf & Chicago Rail*way* Company, the latter company was actively proceeding in the matter of the construction of its line of railway between the terminal points named in its charter. In the course of this construction and the letting of contracts in relation thereto it transpired that the old narrow gauge line between Middleton, Tennessee, and Pontotoc, Mississippi, might be utilized to such extent as the Gulf & Chicago Rail*road* Company, owning and operating the narrow gauge line, and the new Gulf & Chicago Rail*way* Company, might agree as between themselves. The result was articles of agreement and consolidation entered into on January 27, 1903 (Transcript, page 12), and under these articles, as we may infer from the application to the railroad commission for approval of the consolidation because the consolidating lines were neither competing nor parallel, there was an agreement between the consolidating companies, for their own benefit and advantage, that the Gulf & Chicago Rail*way* Company should broaden and standardize the narrow gauge road which was thereupon to "become a part of the line of railroad operated by the consolidated corporation" (Transcript, p. 12).

Some months after this agreement and on the 6th day of July, 1903, the railroad commission approved of the consolidation because it appeared to the satisfaction of the commission that the consolidating corporations did not own parallel or competing roads (Transcript, p. 13), and under the consolidation thus effected and approved, the Gulf & Chicago Rail*way* Company, and its lessee, the Mobile, Jackson & Kansas City Railroad Company, proceeded to construct the line of the Gulf & Chicago Rail*way* Company between its terminal points at Decatur, Mississippi, and Jackson, Tennessee, and incidentally to locate and construct

through the Town of Pontotoc and the County of Pontotoc a part of its main line.

Reaching the town of Pontotoc, repeated surveys disclosed the fact that there were serious natural obstructions—hills and valleys—making it impracticable to extend the main line of the Gulf & Chicago Rail*way* Company from the south to a point of connection with the narrow gauge line at the place where the terminal station of that line had formerly existed in the old townsite of Pontotoc. Therefore, the main line of the Gulf & Chicago Rail*way* Company was surveyed and located through the town of Pontotoc, as extended, and a station for the town of Pontotoc established upon the line of the Gulf & Chicago Rail*way*, at a point some half or three-quarters of a mile distant from the old terminal station of the narrow gauge line. An inspection of the map will show that the Gulf & Chicago Rail*way* Company's main line was then extended northward to a point of junction with the narrow gauge line, about a mile or a mile and a quarter north of the old terminal station of the narrow gauge line in Pontotoc; and from that point north, as is not disputed, the Gulf & Chicago Rail*way* Company and its lessee, the Mobile, Jackson & Kansas City Railroad Company, proceeded promptly to broaden and standardize the narrow gauge line, northward toward the Tennessee line.

No part of the narrow gauge line was actually or permanently abandoned. The old station at the terminus of the narrow gauge in Pontotoc having been destroyed by fire, and the line of the narrow gauge from the junction point just north of Pontotoc, as indicated upon the map, southward to its terminal point, not having been standardized, of course the Gulf & Chicago Rail*way* Company and its lessee were not making actual use of this spur track at the time the controversy in this case arose. On the other hand, the plaintiffs in error,

with the line of the Gulf & Chicago Rail*way* Company located through the town of Pontotoc, as shown by the map, and the station upon that line established, proceeded to grade, build and construct the line through the town, and actually built and constructed the station upon that line, having expended up to the time of the injunction in this case many thousand dollars in this way, and having put the new station into actual use as the depot of the Gulf & Chicago Rail*way* Company in the town of Pontotoc.

At this juncture and on or about the 12th day of January, 1904, the Railroad Commission of Mississippi, construing Section 187 of the Constitution of the State of Mississippi to justify their action, made an order, directed to the Gulf & Chicago Rail*road* Company, ordering and directing that Company to "erect a depot—freight and passenger—of sufficient size and dimensions to transact the business of said town of Pontotoc, on the old site or on the ground now occupied by the people of Pontotoc as a temporary depot; the said work to be commenced not later than the 20th day of January and completed within ninety days of said date, at or about the 20th day of April, 1904" (*ante,* page 2; Transcript, pages 20 and 56).

The contention of the railroad commission in support of this order which seems to have been served upon the plaintiffs in error in this case, was that under Section 187 of the Constitution of Mississippi the Gulf & Chicago Rail*way* Company, engaged in the construction of its line through the County of Pontotoc, was constructing that line within three miles of the county seat, without constructing it through the county seat of Pontotoc County. This contention rested upon the technical proposition that the county seat, within the meaning of the constitutional provision, was limited to the county seat site as it originally existed, and did

not apply to the entire municipality of Pontotoc as its limits had been legally extended. There was no claim, and no pretense of a claim, at this time of any contract, agreement, or obligation upon the part of the Gulf & Chicago Rail*way* Company to build its line of railway along any other route than that which its engineers had located and over which its line was actually graded and was in process of final construction; but the railroad commission sought, under their construction of Section 187 of the Constitution of Mississippi, to compel the Gulf & Chicago Rail*way* Company to locate its depot in the town of Pontotoc at a different place than the one at which it had already established that depot, viz., to relocate it at the place where the old terminal depot of the narrow gauge line had existed. Section 187 of the Constitution of Mississippi, upon which this order was predicated, reads as follows:

> "No railroad hereafter constructed in this state shall pass within three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstructions; provided, such town or its citizens shall grant the right of way through its limits and sufficient grounds for ordinary depot purposes."

Plaintiffs in error, instead of complying with this order of the Railroad Commission in relation to the location of the depot, proceeded to enjoin the commission in the United States Circuit Court for the Southern District of Mississippi from enforcing the order, and thereafter instead of disposing of that controversy in that Court the railroad commission practically abandoned its original order and without making any new, further, or additional order whatsoever, instituted this case by filing its original bill herein in the Chancery Court of the County of Pontotoc.

The bill and the amended answer thereto we have already summarized in considerable detail (*ante*, pages 10 to 26). The Supreme Court of Mississippi, in the opinion which finally disposed of this case, also determined any question arising under those allegations in the Bill of Complaint which relate to the power and authority of the Railroad Commission to order the location of the depot at the old site, either under Section 187 of the Constitution of Mississippi or under the general statutory powers of the commission. Regarding this point the Supreme Court of Mississippi in its opinion says:

> "We have nothing to say in this opinion about the depot or its location. On that point, the Court said before: 'Where its new depot shall be located, in what portion of the town, is not a matter involved in this litigation and is a question for future discussion between the appellees and the Railroad Commission.' This declaration expressly took out of this case any consideration of the location of the depot. We have nothing to do with that matter; we deal alone with the obligation voluntarily entered into by the appellants with the Railroad Commission, that, if they should be permitted to consolidate, they would broaden and standardize the then existing narrow-gauge railroad and make it a part of their main line."
>
> Transcript, page 452, Opinion.

Again they say:

> "The depot is a matter with which we have no concern."

VII.

QUESTIONS INVOLVING: INTERSTATE COMMERCE—CONTRACT RIGHTS—DUE PROCESS OF LAW.

The final conclusion of the Supreme Court of Mississippi is in these words:

> "We direct the appellant to operate the spur track as soon as completed, connecting the main line on the north with the town of Pontotoc, broadening and standardizing it, the said spur track, and making it part of the appellant's *main* line."

and the opinion closes with the words:

> "With these modifications the decree is affirmed."
>
> Transcript, page 455, Opinion.

The decree entered on this opinion, however, affirms the decree of the Chancery Court of Pontotoc County without any modification (Transcript 450, 451 Decree) and the original decree of the Chancery Court thus affirmed perpetually enjoins the plaintiffs in error "from building and operating a railroad along any line that does not include and comprise the original line of the said Gulf & Chicago Rail*road* Company, as originally constructed and maintained, and that said defendant companies are hereby directed and commanded to broaden and standardize the entire line of the original narrow gauge railroad, including that part which has been heretofore abandoned as aforesaid, throughout its entire length, and that said defendant companies are hereby commanded and directed to construct its line of railway in such a way as to include as part of its main line all the line of the narrow gauge line * * * and it is further ordered and decreed that the construction of the line so as to connect the new line with the original line from the

southern terminus of said original line shall be completed within six months of this date."

Transcript, 445-6, Decree.

We insist that this decree as thus affirmed by the decree of the Supreme Court of Mississippi has the effect of depriving the plaintiffs in error of their property without due process of law and depriving them of their vested contract rights, and this insistence rests upon the facts already stated and upon the following propositions of fact and law.

The Gulf & Chicago Railway Company is a corporation organized under the laws of Mississippi to build a proposed railroad in the State of Mississippi extending "in a general northerly direction from a point at or near the town of Decatur in the county of Newton, through the several counties ..... (naming them and including the County of Pontotoc) ..... crossing the said line of the state of Mississippi at or near the town of Bloomsfield, in the county of Tippah, to a point at or near the city of Jackson, in the county of Madison in the state of Tennessee, the estimated length of said railroad being 192 miles" (Transcript, pages 8-10).

Under paragraph "Third," Section 408, Code of Mississippi, 1906, above quoted in full, the Gulf & Chicago Railway Company became entitled to construct and operate "the railroad as specified and defined in the application of the projectors for its creation and organization, and to operate such branches, spurs and laterals thereof as may be necessary or proper to develop the country through which its main line may extend."

Under paragraph "Tenth," Section 4089, it became entitled to consolidate with any railroad neither parallel nor competing, "upon such terms as the consolidating companies may agree upon" and under the "Seventeenth" subdivision, Section

4096, it became entitled to "intersect, join or unite its railroad with any other railroad ..... at any points on their route," and along with these rights it had the express statutory authority "after beginning the construction of its road" to "make all necessary or proper changes in its course or direction from that specified in the application for its incorporation," and it was only in the event of its changing its terminal point that it was required by law at the time of its incorporation to ask the consent of the railroad commission (Code Miss. 1906, Sec. 4101; Code Miss. 1892, Sec. 3599).

In like manner the Gulf & Chicago Rail*road* Company had the express legislature and charter right, dating back to the year 1890, to acquire, cross, connect and make Junctions with other roads (Laws of Miss., 1890, Ch. 507, § 2; Tr., 462).

The Court will thus see that there were only two respects in which the state railroad commission under the law of Mississippi had any authority to control, regulate or interfere with the construction, location and operation of the line of the Gulf & Chicago Rail*way* Company. The commission had power to prevent any change of the ultimate terminal points of the Gulf & Chicago Rail*way* Company's line without its consent, and the commission had power to prevent and frustrate the consolidation of the Gulf & Chicago Rail*road* Company with any parallel or competing line of railroad. The Commission was, as we have already seen, absolutely without power to consent to a consolidation with a parallel or competing line. So far as the Commission had any discretion to exercise, it exercised that discretion to its fullest extent in determining upon the application for consolidation that the Gulf & Chicago Rail*road* Company and the Gulf & Chicago Rail*way* Company were not parallel or competing lines.

This being so, we submit that the railroad com-

mission was, under the statutory provisions above quoted and referred to, absolutely without power, either by its own order or through judicial proceedings, to compel the Gulf & Chicago Rail*way* Company to intersect the line of the narrow gauge railway at the exact point of the termination of the narrow gauge in the town of Pontotoc, and that both the commission and the Supreme Court of Mississippi are without power to require the Gulf & Chicago Rail*way* Company to abandon its line as constructed through the town of Pontotoc, and its station as constructed and in use in that town; to build a new station at the terminal point of the old narrow gauge line, and to extend the narrow gauge line, broadened and standardized, from its original terminal point in the town of Pontotoc, southward to some point of intersection with the line of the Gulf & Chicago Rail*way* south of the town of Pontotoc.

It is not denied under the decree of the Chancery Court of Pontotoc County, as affirmed by the decree of the Supreme Court, that plaintiffs in error will sustain a loss approximating $48,000 of actual expenditure on their line and station as they now exist, and that it will cost a large sum, estimated at from $40,000 to $80,000, to build a new station and construct an extension of the narrow gauge line southwardly to a junction with the main line of the Gulf & Chicago Rail*road* Company, and at the same time broaden and standardize the line of the narrow gauge through the town of Pontotoc so as to make the narrow gauge line a part of the main line of the Gulf & Chicago Rail*way* Company entirely through the town of Pontotoc.

In addition to these losses and this cost of construction, the decrees of the Mississippi Courts here complained of will compel the plaintiffs in error to acquire new rights of way, either by purchase or by the exercise of the right of eminent domain;

will materially increase the length of their line through the town of Pontotoc; cause an increase of curvature and grades upon the line, making it impracticable to operate trains as at present through such town except by the use of an additional or "pusher" locomotive, and will thus greatly hamper, burden and permanently oppress plaintiffs in error in the operation of their through trains and in the carriage of interstate freight, passengers and traffic. That this is an interference with interstate commerce seems to be a necessary inference from recent and controlling decisions of this Court.

Miss. R. R. Com. *v.* Ill. Cent. R. R., 203 U. S., 335;

Ill. Cent. R. R. Co. *v.* Illinois, 163 U. S., 142;

Cleveland, &c., R. R. Co. *v.* Illinois, 177 U. S., 514, 522.

Seeking to avoid the cogent and unanswerable reasoning of the cases just cited, and endeavoring in the case at bar to find a non-federal ground upon which to base its opinion and thereby affirm the decree of the Chancery Court of Pontotoc County so that it could not be interfered with upon a writ of error to this Court, the Supreme Court of Mississippi adopted the theory that the State railroad commission had entered into *a contract* with the consolidating companies under which contract the commission approved the consolidation only because the Gulf & Chicago Rail*way* Company was obligating itself to the commission to make every foot of the existing narrow-gauge line of the Gulf & Chicago Rail*road* Company a part of its main line, the opinion of the Court *abandoning and disapproving every other contention of the railroad commission.* The Supreme Court thus rests its decision in this case solely upon the proposition of an existing contract made by the application for an

order approving the consolidation and the assent thereto, and binding upon the Gulf & Chicago Rail*way* Company as a contract between it and the railroad commission.

We have already seen under the statutes of Mississippi pursuant to which the Gulf & Chicago Rail*way* Company and the Gulf & Chicago Rail*road* Company were organized and incorporated, that their right of consolidation was absolute, provided they were neither parallel nor competing lines; while, on the other hand, if they were either parallel or competing lines, the railroad commission was expressly forbidden to consent to their consolidation. It is, of course, *reductio ad absurdum* for the Supreme Court of Mississippi, in its opinion, to attempt to make it appear that the disuse of a mile of the narrow gauge line constitutes a breach of this alleged contract and makes parallel and competing lines of railway out of lines which the commission expressly ruled were neither parallel nor competing.

It follows from the foregoing that under the laws of Mississippi the railroad commission was without power or authority to enter into any contract or agreement as to this consolidation; their only power was either to consent to the consolidation upon the ground that the roads were neither parallel nor competing, or to disapprove the consolidation upon the ground that they were parallel or competing, and the use or disuse of a mile of narrow gauge road over a route impracticable for a main line can neither change the law nor give them power to contract upon a forbidden subject. In the language of this Court, "the Commissioners were given no power to contract for the State or the public. All they could do was to say yes or no to a simple request by the Company" for leave to consolidate two lines which either were or were not parallel or com-

peting. "If they said yes," the consolidation might be made. "If no," the consolidation must be abandoned. "The Commissioners entered into no agreement with the Company. They simply said, 'We for the State, will assent'" to your consolidation, because your lines are neither parallel nor competing.

> Railroad Company *v.* Hammersley, 104 U. S., 1, 5.

It seems from the case just cited that the petition for approval of consolidation and the order consenting to consolidation was not an agreement or a contract, merely a request to the Commission to perform an administrative act; that the administrative act was the order of the Commission approving of the consolidation, and that this order and the application imposed upon the Gulf & Chicago Rail*way* Company no burden as to the location of its station or the establishment of the entire narrow gauge, including the spur track to the old station, as part of the main line of the Gulf & Chicago Rail*way* Company through the town of Pontotoc.

In support of this contention we quote the langauge of this Court regarding the Mississippi State Railroad Commission:

> "The Commission is.....a mere administrative agency of the State, as held by the Mississippi Court."
>
> Miss. R. R. Com. *v.* Ill. Cent. R. R., 203 U. S., 335, 341.

How can a mere administrative agency of the State of Mississippi enter into a contract that permits parallel and competing lines of railroad to consolidate, in violation of the statutes of the State, on condition that they operate as a part of their main line a certain mile of railroad, and yet deny

them that right, through the opinion of the Supreme Court of Mississippi, if in the conduct of their business as interstate carriers they find it impracticable to use the particular mile in question?

VIII.

The Stegall Bill—Was It a Binding Contract?

This brings us to another proposition of great importance in the case at bar. The railroad commission is a mere creature of the legislature of the State of Mississippi. No power is given it by the legislative act under which it was created, to enter into contracts binding the State, or to make agreements regarding the consolidation of parallel or competing lines of railroad; yet the Supreme Court of Mississippi has substantially adjudged that in the case at bar it made such a contract for this very purpose. Nevertheless the same Court, in the same opinion, denies the power of the legislature of the State of Mississippi to make a contract with the plaintiffs in error, the Gulf & Chicago Railway Company *through an express legislative enactment* approving the location of its railway through the town of Pontotoc, and authorizing a continuance of same on condition that it shall broaden and standardize the spur track into the old town of Pontotoc and to the site of the old station.

After this controversy arose and pending its determination by the Supreme Court of Mississippi, the legislature of the State of Mississippi, upon full consideration, after investigation by a committee of that body, enacted a law in the nature of a contract between the State of Mississippi and the Gulf & Chicago Railway Company, intended to settle the entire controversy upon terms most equitable and just. The act in question is known as the "Stegall Bill," and appears in the record in

full. To that act we invite the careful consideration of the Court.

Transcript, pages 471, 473; Laws of Miss., 1906, Chap. 143.

This act being printed in full in the transcript, it seems unnecessary to repeat it here. It expressly provides that "the Gulf & Chicago Railway Company, as consolidated, be and it is hereby authorized and empowered to operate its line of railroad through the town and county of Pontotoc, as the same is now located and constructed."

Transcript, page 472; Laws of Miss., 1906, Chap. 143, Sec. 1.

But this agreement is upon the express condition that the Gulf & Chicago Railway Company shall broaden and standardize the spur track "over the entire portion of the narrow gauge railroad right of way heretofore abandoned by it and shall cause the same to be connected with its main line at the point where said main line converges with the old narrow gauge right of way, and shall cause the same to be completed and ready for operation within six months from the passage of this act."

Transcript, page 472; Laws of Miss., Chap. 173.

And in further consideration of the agreement made with the State of Mississippi, through Section 1 of said act as above quoted, Section 3 of the act provides; when the track over the spur is completed "it shall be the duty, at the option of the consignee, of said railway company to deliver at the southern terminus of its line, at a suitable depot to be constructed and maintained by said railway company at its southern terminus, all freight handled by it in the town of Pontotoc, in carload lots, and said railway company shall receive for shipment

over its line at said depot carload lots offered for shipment at said depot.

Transcript, 472, 473; Laws of Miss., 1906, Chap. 143, Sec. 3.

This act took effect from its passage (Transcript, 474), and it will not be disputed that the Gulf & Chicago Railway Company, within the time limited by the act, commenced and completed the work of constructing a standard gauge track over said spur line from the point of intersection with its main line north of Pontotoc to the said station site in the town of Pontotoc, and there established a temporary station in accordance with the provisions of the Stegall Bill, and was proceeding to comply with all the provisions of that Act when the Supreme Court of Mississippi in its opinion attempted to brush aside this contractual legislation, in this language:

> "So far as the Stegall Bill is concerned, it is perfectly obvious, as already held in the former opinion, that this special Act, which was in substance for the benefit of this particular corporation, was under the general statute laws which we have just referred to with respect to consolidation, palpably and manifestly violative of section 87 of the Constitution, and plainly null and void."
>
> Transcript, 452, Opinion Supreme Court of Miss.

We thus have the Supreme Court, in the same opinion, asserting the power of the railroad commission to make a contract in relation to the consolidation of parallel or competing lines binding upon the Gulf & Chicago Railway Company, and denying to the legislature of the State of Mississippi, which created the commission without conferring any power to contract upon it, the right by legislative enactment, to make a contract for the State in settlement of the entire controversy upon a perfectly equitable basis.

Regarding this decision of the Supreme Court of Mississippi holding, but not decreeing the Stegall Bill to be an unconstitutional exercise of legislative power, we make the point that the Stegall Bill (Chap. 143 of the Laws of Mississippi, 1906), was and is a contract, upon sufficient consideration, between the State of Mississippi and the Gulf & Chicago Railway Company, and therefore that the decision of the Supreme Court of Mississippi denying the obligation of this contract is either (*a*) a law impairing the obligation of a contract, or (*b*) a denial to the plaintiffs in error of the equal protection of the laws, or (*c*) the taking of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

To the best of our knowledge, the question thus made and presented has never before arisen in this Court. The opinion of the Supreme Court of Mississippi invalidating, or attempting to invalidate, the contract of the State of Mississippi made through the enactment of the Stegall bill, clearly deprives the plaintiffs in error of their rights under that act and directly impairs the obligation of that contract, if it be a contract. This, we think, raises a question which must be determined by this Court without regard to the conclusions of the Supreme Court of Mississippi in its opinion declaring the Stegall bill a violation of the statutes and constitution of Mississippi.

We are familiar with the decisions of this Court holding that the construction of statutes as to their constitutionality or unconstitutionality under State constitutions by State Courts of last resort is binding upon this Court:

Mason *v.* Missouri, 179 U. S., 328.

Fairfield *v.* County of Gallatin, 100 U. S., 47.

Board of Liquidation *v.* Louisiana, 179 U. S., 622.

But neither the cases cited, nor any in the long list of similar decisions with which we are familiar, determines the proposition here raised and earnestly insisted upon. That proposition is: When a State Legislature for the purpose of settling a controversy between an administrative agency of the State and a railroad company engaged in the construction and operation of a line of interstate railway, deliberately enters into a contract through a legislative enactment for the settlement of that controversy, then such legislative enactment constitutes a contract, and being upon a sufficient consideration, it is not the class of special legislation inhibited by Section 87 of the Constitution of Mississippi and is a binding obligation conferring vested rights upon the plaintiffs in error, which can neither be impaired nor destroyed by the decision of the Supreme Court of Mississippi conferring the right to contract in behalf of the State upon the railroad commission while denying it to the legislature which created that commission.

This Court must at some time draw the line as to the right of State Courts to destroy vested contract rights under the guise of "constitutional construction," and no more flagrant illustration of the exercise of this confiscatory power is ever likely to present itself than in the instance of the case at bar.

It is true that this Court has well said: "It is the province of the Supreme Court of the State to construe its own constitution and laws," and when it decides that one of its laws is not authorized by its constitution it is not for us to deny the correctness of the decision *when there is no evasion in this way of Federal authority.*"

Boyd *vs.* Alabama, 94 U. S., 645, 649.

Section 87 of the Constitution of Mississippi provides as follows:

> "No special or local laws shall be enacted for the benefit of individuals or corporations

in cases which are or can be provided for by general law, or where *the relief sought can be given by any Court of this State*" (Constitution of Mississippi of 1890, Sec. 87).

The very language of this constitutional provision shows that it has no application to such an act as Chapter 143, Laws of Mississippi of 1906. No *general* law could possibly have been passed under which the *existing* location of the line of railway and station of the Gulf & Chicago Railway Company, in the town of Pontotoc, could be legalized and hence under the language of the constitutional provision, a special law in the nature of a contract was clearly permissible.

Guthrie Nat. Bk. *v.* Guthrie, 173 U. S., 528, 533.

Again, the relief given by the enactment of Chapter 143 of the laws of Mississippi of 1906 could not have been afforded by any Court of the State of Mississippi, because that relief consisted of express authority conferred upon the Gulf & Chicago Rail*way* Company to abandon a part of the narrow gauge line and to transform the abandoned part of that line into a spur track to be operated for certain purposes and under certain definite conditions. More than this, it provides in Section 4 that the Railway Company shall pay a part of the cost of a public highway, and in Section 1 it expressly authorizes a particular point of junction north of the town of Pontotoc, between the lines of the Gulf & Chicago Rail*way* Company and the Gulf & Chicago Rail*road* Company. Special legislation of this character, which manifestly could not be provided by any general law, or by the judgment or decree of any Court, is directly authorized in such excepted cases under Section 87 of the Constitution of Mississippi above cited, and instead of the Stegall Bill being unconstitutional under the provisions of that section of the State Constitution it seems to us beyond question that its constitutionality is established by this provision.

The case is not different in principle from the case of *Railroad* vs. *Hamersley, supra.* In that case, a State railroad commission, under the provisions of a general law relative to the abandonment of an existing station, consented to the abandonment of an existing station by the New Haven & Northampton Company. This Court not only held that such consent was not a contract between the State, or the commission, and the railroad company, but went further and held that a special act of the legislature of Connecticut "establishing a depot at Plantsville" and amending the charter of the New Haven & Northampton Company so as to compel it to establish such depot and to stop its trains thereat was a valid exercise of legislative power which could be enforced by mandamus or other proper legal proceedings.

Railroad Company *vs.* Hammersley,
104 U. S., 1, 3 and 4.

In the case at bar there is no practical difference in the principle involved. In the Hammersley case the Connecticut legislature, by special act, amended the charter of a particular railroad company so as to compel the establishment of a new station upon its line and the stoppage of trains thereat, thereby invalidating the action of the State railroad commission in authorizing the railroad company to abandon such station. In the case at bar the legislature of Mississippi, by special act, under circumstances where neither a general law nor a judicial decree could have afforded relief, entered into a contract with the Gulf & Chicago Railway Company, binding upon the State of Mississippi and as such terminating the attempt of the State railroad commission to punish the plaintiffs in error by compelling them to abandon valuable property, establish a new station and a new line for their railway through the town of Pontotoc, and acquire rights of way and make extensions for that purpose.

We do not believe that even the ingenuity of the learned Chief Justice of the Supreme Court of Mississippi, who delivered the final opinion in this case, can show that the relief afforded by this special legislation could have been granted either by general law or judicial decision. Even judicial legislation would hardly have been equal to the emergency.

For these reasons we submit that Chapter 143 of the laws of Mississippi of 1906 was and is a valid and constitutional exercise of legislative power under Section 87 of the Constitution of Mississippi. If this be so, then the decree of the Chancery Court of Pontotoc County should not have been affirmed in this case by the Supreme Court of Mississippi, but should have been reversed on the express ground that the legislature, by the enactment of the Stegall Bill, had superseded the authority of its administrative agent, the State railroad commission, and settled every question in controversy between the commission and the plaintiffs in error, by a legislative enactment constituting a contract binding upon the State and upon the railway company.

Upon all of the foregoing propositions and the several assignments of error heretofore made this case is now,

Respectfully submitted,

WM. HEPBURN RUSSELL,

Counsel for Plaintiffs in Error.

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FOR

FILMING

Supreme Court of the United States,

OCTOBER TERM, 1906.

THE MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY *et al.*, Plaintiffs in Error, vs. THE STATE OF MISSISSIPPI, THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI *et al.*, Defendants in Error.	No. 590.

STATEMENT, BRIEF AND ARGUMENT IN BEHALF OF PLAINTIFFS IN ERROR IN OPPOSITION AND REPLY TO THE MOTION AND BRIEF OF DEFENDANTS IN ERROR "TO VACATE AND DISCHARGE THE SUPERSEDEAS HERETOFORE GRANTED IN THIS CAUSE."

I.

Defendants in error, by their counsel, move to vacate and discharge the supersedeas granted in this cause by one of the Justices of this Court in connection with the application for and granting of the writ of error transferring this cause from the

Supreme Court of Mississippi to the Supreme Court of the United States for review. They base their motion upon the two contentions:

(*a.*) That the writ of error was not applied for or obtained within sixty days after the rendition of the judgment and decree in the Supreme Court of Mississippi; and

(*b.*) That a copy of the writ of error was not deposited in the office of the Clerk of the Supreme Court of Mississippi within sixty days after the rendition of the judgment and decree of the Supreme Court of Mississippi.

The sole point in controversy, as counsel for the defendants in error claim, is whether the supersedeas should be vacated and discharged because the writ of error was not issued and the supersedeas granted and served within sixty days from the date of the entry of the decree in the Supreme Court of Mississippi.

It is not contended by counsel for defendants in error in their brief that the writ of error itself was improvidently granted or that it was granted after the expiration of the time provided by law for the removal of cases by writ of error from the Supreme Court of Mississippi to the Supreme Court of the United States. It was, in fact, granted, filed and citation served within six months after the date of the entry of the decree in the Supreme Court of Mississippi, the writ of error issuing out of this court on November 20, 1906, being promptly filed in the office of the Clerk of the Supreme Court of Mississippi, and service of citation acknowledged on November 26, 1906.

Tr., pp. 490–491 and 497.

This was within the time limited and required by law.

Revised Statutes U. S., §§ 709, 1003, 1008.

That the judgment of the Supreme Court of the State of Mississippi was rendered and the decree in that Court entered on the 11th day of June, 1906, and that this was the date of the decree in the Supreme Court of Mississippi is conceded.

Tr., pp. 450, 455.

Nor do we deny that the writ of error in this case was not issued until the 20th day of November, 1906, more than sixty days, excluding Sundays, after the rendering of the judgment.

Tr., pp. 490, 491.

It must also be conceded that the bond in this case was approved to operate as a supersedeas on the 19th day of November, 1906.

Tr., p. 493.

On the other hand, it is not denied by the defendants in error that the writ of error and supersedeas bond were promptly, and almost immediately after the issue of the writ of error, filed in the Supreme Court of Mississippi with the Clerk of that Court, and the citation served upon the defendants in error, as the acknowledgment of service by the Attorney-General of the State of Mississippi shows.

Tr., p. 497.

Counsel for defendants in error bases his argument in support of the motion to vacate and discharge the supersedeas upon the provisions of §§ 1003, 709 and 1007 of the Revised Statutes of the United States, and several decisions of this Court construing the same.

Whether the contentions of counsel for the defendants in error upon these statutes and authorities must be sustained as correct *upon the facts disclosed by the record in this case*, is a question upon which opinions may well differ, and which it is therefore proper to submit to this Court for consideration and determination.

If the statutory provisions referred to in the brief of counsel for defendants in error are to be construed as there claimed, then the writ of error, although sued out and granted within the time allowed by law, becomes practically worthless as a remedy to prevent the infliction of irreparable wrongs upon the plaintiff in error through the enforcement of the decree of the Supreme Court of Mississippi, by the issuance of a mandatory writ of injunction, notwithstanding the pendency of this case upon the writ of error in this court.

The decree in the case at bar is not a decree for the payment of money, nor is it a decree for the seizure or restoration of property. It is solely and exclusively a decree to compel the carrying into effect, through the issuance of a mandatory writ of injunction of a most extraordinary order of the Railroad Commission of the State of Mississippi. That order, if carried into effect, involves the following propositions:

FIRST.—That the plaintiff in error, the Mobile, Jackson and Kansas City Railroad Company, must abandon a part of its established line of railway.

SECOND.—That it must abandon an established station upon such line of railway.

THIRD.—That it must change the route and location of its line of railway through the County and Town of Pontotoc, Mississippi, and build a different line over a different route.

FOURTH.—That it must build, establish and maintain a new station or depot building upon the new line of railway which it is required to construct over the new route.

FIFTH.—That in order to comply with these requirements of the decree, it will be necessary for it to acquire by purchase or condemnation at its own

expense and through the expenditure of its own moneys, a new and distinct right of way from that now owned by it and over which its line of railway is being operated at the present time and at the time of the institution of this suit as an interstate carrier of freight, passengers and the mails of the United States.

SIXTH.—That after the expiration of six months from the date of the decree in the Supreme Court of Mississippi (June 11, 1906) the Mobile, Jackson and Kansas City Railroad Company, notwithstanding the fact that it is an interstate carrier of freight, passengers and the United States mails, is to be perpetually enjoined and restrained from operating its trains and using its line of railway and station as built and established in and through the Town of Pontotoc, in the County of Pontotoc, Mississippi; and by and through this provision of the decree its property is to be confiscated, its line of railway destroyed and the continuance of its business over its line of railway forever prevented.

It will be noted by the Court that such a decree as this involves the issuance of no execution in the ordinary form as against the defendant, but involves the issue of a writ of injunction in which is included a command for the acquisition of property, a change in the route and line of railway of the plaintiff in error and the construction, maintenance and operation of additional track over a new right of way and along a new route, not specifically designated, through said Town of Pontotoc, Mississippi.

That such is the tenor and effect of the decree in the Supreme Court of Mississippi cannot be successfully denied. The language of the Supreme Court of Mississippi in its opinion is:

"In view of the various interests here involved we direct the appellant to operate the spur track as soon as completed, connecting the main line on the

north with the Town of Pontotoc, broadening and standardizing it, the said spur track, and making it part of the appellant's main line, and that appellants shall have six months from the date of this decree within which to make it part of its main line, *the supersedeas meantime to remain in force.*"

Tr., p. 455.

The formal order of the Supreme Court of Mississippi is:

"That the decree of said Chancery Court rendered in this cause at the March Term thereof, A. D. 1906, on the 10th day of March, 1906, be and the same is hereby affirmed."

Tr., pp. 450, 451.

The material part of the decree in the Chancery Court of Pontotoc County affirmed by the foregoing decree of the Supreme Court of Mississippi is as follows:

"It is therefore ordered, adjudged and decreed that the injunction heretofore granted be and the same is hereby made perpetual, and that said defendant companies are hereby perpetually enjoined from building and operating a railroad along any line that does not include and comprise the original line of the said Gulf and Chicago Railroad Company as originally constructed and maintained, and that said defendant companies are hereby directed and commanded to broaden and standardize the entire line of the original narrow gauge railroad, including that part which has been heretofore abandoned as aforesaid, throughout its entire length, and that said defendant companies are hereby commanded *to construct its line of railway* in such way as to include as part of its main line all the line of the narrow gauge line.

"And it is further ordered that the said defendant companies begin the work of broadening and standardizing that part of the line heretofore abandoned

within thirty days of the rendition of this decree, and directs that the broadening and standardizing of this abandoned line must be completed within sixty days of this date, and that said defendant railroad companies *shall begin the operation of all their trains* and the delivery and receipts of all freights and passengers over and upon the said abandoned part as aforesaid within sixty days of the date of this decree.

"*And it is further ordered and decreed that the construction of the line so as to connect the new line with the original line from the Southern terminus of said original line shall be completed within six months of this date.*

"And it is further decreed that the modification of the injunction heretofore made in this cause be and the same is hereby revoked and set aside.

"And it is further decreed that in case an appeal is taken in this cause as to the preventive part of the injunction herein made perpetual no supersedeas shall be allowed upon any terms, but as to the mandatory part of the injunction seeking affirmative relief supersedeas will be granted upon making application for appeal and filing bond in the sum of $5,000, conditioned as provided by law with good and sufficient sureties to be approved by the Clerk, provided same is applied for and bond given within five days of the rendition of this decree, and provided said appeal be prosecuted to the April Term of the Supreme Court, 1906."

Tr., pp. 445, 446.

It will be conceded by opposing counsel that the bond was given and the appeal taken from this decree to the Supreme Court of Mississippi in due time and regular course.

Tr., pp. 446, 447.

And upon this, which was the second appeal to the Supreme Court of Mississippi in the case, errors

were duly assigned in the Supreme Court of Mississippi.

Tr., pp. 448-450.

And it was upon the hearing of this appeal that the Supreme Court of Mississippi entered the decree which is the basis of the writ of error now under consideration, the only modification of the decree in the Chancery Court of Pontotoc County by the decree of the Supreme Court being the granting of "six months from the date of this decree within which" the Mobile, Jackson and Kansas City Railroad Company, the plaintiff in error, was required to do all the things directed by the decree in the Chancery Court of Pontotoc County,

On this state of the record we insist:

FIRST.—That the statutes and decisions cited and relied upon by counsel for the defendants in error are not applicable because the decree below, not being a judgment for either money or property, but only a mandatory and preventive writ of injunction, is vacated, without regard to the giving of a supersedeas bond, by the granting of a writ of error removing the cause to this court.

SECOND.—That the plaintiff in error is not required, on the state of facts presented by this record, to give a supersedeas bond within sixty days from the date of the rendition of the judgment or decree, the writ of error itself having the effect to stay proceedings in the nature of the issue of a writ of injunction in the court below, and § 1007 of the Revised Statutes expressly providing that security may be given after the expiration of sixty days from the date of the rendition of the judgment "with the permission of a Justice or Judge of the Appellate Court."

THIRD.—That it is within the power of this Court (where the decree of the State Supreme Court involves only the direction to issue a perpetual man-

datory and preventive writ of injunction and does not involve the issue of process for the recovery of money or property), to stay the issue and execution of such writ of injunction by an order of supersedeas upon the granting of a writ of error or by the entry of an interlocutory restraining order for that purpose during the pendency of the cause upon the writ of error in this court.

FOURTH.—That the proceedings being stayed and a supersedeas in force when the writ of error was granted it is in the power of this Court under § 716, R. S., U. S., to continue the supersedeas in force. (See Pars. II. and III. of this brief.)

Upon these propositions the legal argument for the plaintiffs in error in opposition to the motion of the defendants in error is confidently based, and this, taken in connection with the impracticability, if not the impossibility, by reason of the system of procedure prevailing in the Supreme Court of Mississippi, of getting the enormous transcript in this cause before this Court upon a petition for a writ of error within sixty days from the rendition of the decree, will, we think, justify this Court in denying the motion of the defendants in error, or in entering an order extending the stay of proceedings granted by the Supreme Court of Mississippi.

On the state of facts shown by this record, we submit that the dissenting opinion of Mr. Justice Bradley in the Slaughter House cases, even though not the law as applied to the facts of those cases, should be held to be the law as applied to this case. That dissenting opinion is as follows:

"I dissent, with some diffidence, from the opinion of the Court, on the following grounds:

"1st. That notwithstanding the Act of Congress declares that a writ of error shall be a supersedeas if certain conditions are performed, the judgment of the Court has the effect of leaving many classes of decrees and judgments *in equity*, though appealed

from, entirely effective and operative between the parties, whereas the writ of error ought to suspend the effect and operation thereof until the case is heard in this Court.

"2d. That the judgment of this Court will have the effect to allow subordinate State courts to evade the supersedeas of a writ of error in all cases where the court of last resort remits the record to them for execution. The judgment of this Court disclaims all jurisdiction over the acts of the subordinate State courts, and thereby, in my judgment, surrenders a very important power necessary to the effective support of its appellate jurisdiction.

"3d. That the judgment of the Court remits the practice on this subject substantially back to the practice of the English courts of equity, in which it is conceded that an appeal does not suspend proceedings nor act as a supersedeas on the proceedings in the court appealed from; and, in effect, departs from the Act of Congress, which declares that a writ of error or an appeal in the Federal courts *shall* be a supersedeas.

"4th. That the effect of the judgment of the Court is to disclaim its just control over the *parties to the record.*"

Slaughter House Cases, 10 Wall., 298, 299.

II.

There is another point of view on the facts disclosed by the record in this case, which strongly tends to establish the proposition that the decree of the Supreme Court of Mississippi is not one under which a writ of mandatory injunction can issue after the removal of the case to this court by writ of error.

The second appeal from the decree of the Chancery Court of Pontotoc County to the Supreme Court of Mississippi had the effect of superseding that decree so far as the mandatory part of the injunction was concerned (Tr., p. 446), and bond with approved sureties was given for the purpose of this supersedeas.

Tr., pp. 446, 447.

The decree of the Supreme Court of Mississippi embodied in the opinion of the Supreme Court of Mississippi, which seems to be the practice in that State, as to the mandatory part of the decree, provides that: "We direct the appellant to operate the spur track as soon as completed connecting the main line on the north with the Town of Pontotoc, broadening and standardizing it, the said spur track, and making it part of the appellant's main line, and that appellants shall have *six months from the date of this decree* within which to make it part of its main line, *the supersedeas meantime to remain in force.* With these modifications the decree is affirmed."

Tr., p. 455.

And the decree as so modified was then affirmed by formal order; but no mandate to the lower court was issued.

Tr., pp. 450, 451.

This being an equity case, the appeal to the Supreme Court of Mississippi under the practice in that State, which is the general practice in States where the distinction between law and equity is observed, brought the entire case for final adjudication and determination upon both the facts and the law to the Supreme Court of Mississippi. Nothing in the decree of affirmance directs or requires any further action by the lower court, that is, by the Chancery Court of Pontotoc County, Mississippi, and the decree of the Supreme Court of Mississippi, in express terms as just quoted, sus-

pends the operation of the decree and continues the supersedeas in force for a period of six months from the date of the decree. This six months did not expire until December 12, 1906. In the meantime, the case had been removed to this Court on November 20, 1906, by writ of error, the supersedeas granted upon the appeal to the Supreme Court of Mississippi from the Chancery Court of Pontotoc County being still in full force and effect when the writ of error was granted and the six months order of supersedeas made by the Supreme Court of Mississippi in connection with the entry of its decree being also still in full force and effect. This brought the case to this court for final determination upon both the law and the facts with the supersedeas order of the Chancery Court of Pontotoc County, Mississippi, and of the Supreme Court of Mississippi still in full force and effect for the protection of the plaintiffs in error against the issue of a mandatory writ of injunction.

Does it not follow, both as a matter of law and of common sense, that the case having been brought to this court with the supersedeas order in the court below in full force and effect, that this court takes and acquires the power and jurisdiction to extend and continue such supersedeas order until the case can be heard and disposed of upon its merits in this court, and this entirely without regard to the question whether the supersedeas bond given in connection with the granting of the writ of error by this Court and approved to operate as a supersedeas is entitled to be treated as effective for that purpose.

In short, if it were conceded that the supersedeas bond given in connection with the granting of the writ of error to this court and the order of supersedeas endorsed thereon by a Justice of this Court, not being given and filed within sixty days from the date of the decree in the Supreme Court of Mississippi, are without effect as a supersedeas, yet this does not change the proposition here stated, namely, *that the supersedeas bond givin in the Chancery*

Court of Pontotoc County, Mississippi, coupled with the order of supersedeas for a period of six months from the date of the entry of the decree of modification and affirmance in the Supreme Court of Mississippi, were in full force and effect at the time the case was removed by writ of error to this Court, and therefore, this Court alone, has jurisdiction to determine whether such supersedeas shall be continued until the case is heard and determined upon its merits or not, the entire case having been removed from the Supreme Court of Mississippi to this court by writ of error at a time when the order of supersedeas of the Supreme Court of Mississippi remained in full force and effect; this, under what seems to be settled rules of appellate procedure in equity, transferring the cause in its then state to this Court for review.

Any other doctrine than the one here contended for seems to be so mischievous in its effects and so much against public policy as to justify this Court in giving to this entire subject a re-examination and such enunciation of legal doctrine as may be fitting upon the peculiar and unprecedented state of facts presented by the record in the case at bar.

In the Slaughter House cases "it was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisites for a supersedeas were complied with." But "it was *not* decided that the court below had no power, if the purposes of justice required it, to order a continuance of the *status quo* until a decision should be made by the appellate Court, or until that court should order the contrary. This power undoubtedly exists and should always be exercised when any irremediable injury may result from the effect of the decree as rendered; but it is a discretionary power and its exercise or non-exercise is not an appealable matter."

Hovey *v.* McDonald, 109 U. S., 150, 161.

It was in recognition of this power that Equity Rule XCIII. was adopted by this court in October, 1878.

While it is true that the order of the Supreme Court of Mississippi suspending the execution of their decree of affirmance for a period of six months from the date of the decree was not made as a part of the proceeding for the removal of the case from that court to the Supreme Court of the United States for review by writ of error, yet it is true that the supersedeas order was in full force and effect in the Supreme Court of Mississippi and binding upon the Chancery Court of Pontotoc County at the time that the case was actually removed from the Supreme Court of Mississippi to this court by writ of error in November, 1906. Hence it seems to follow, both as a matter of logic and a matter of law, that the decree being suspended and superseded at the time of the removal of the case to this court for review, it is within the power and discretion of this court to continue the order of supersedeas until the final hearing of the cause. Not to do so is to place it within the power of the defendants in error to stop the operation by the plaintiff in error of its line of railway, to interfere with interstate commerce and the carriage of the mails of the United States, and actually to confiscate the property of the plaintiff in error and compel it to make large additional expenditures of money in order to comply with what we believe to be a void and illegal order of the Railroad Commission of the State of Mississippi.

May we not confidently rely upon this court, with the record in this condition, to exercise what seems to be its undoubted power by the continuance of the *status quo* as it existed at the time the writ of error was granted?

No case cited by the counsel for the defendants in error upon his brief in support of the motion now under consideration passes upon or determines questions arising upon this state of the rec-

ord at the time of the removal of the case from the Supreme Court of Mississippi to this court. None of the statutes cited and relied upon affect the inherent power of this court when a case is removed to it by writ of error to extend and continue the status as it exists at the date when the writ of error becomes effective. If this be true, then we invoke the power of this court, even though it be compelled to vacate the supersedeas granted by Mr. Justice Day in connection with the issuance of the writ of error on the 19th of November, 1906, to make and enter its own order, as a part of the interlocutory proceedings in this cause in this court, extending the time for the plaintiff in error to carry into effect the mandatory decree of the Supreme Court of Mississippi until a reasonable time after the case shall have been heard and finally disposed of upon its merits by this court.

Surely this court has power to continue an order suspensive in its nature which was in full force and effect at the time of the removal of the case from the Supreme Court of Mississippi to this court by writ of error.

If this point of view be correct, no previous case decided by this court and no statute invoked and relied upon by counsel for defendant in error is applicable, and we have a new question for determination upon established principles of law and equity by this tribunal.

III.

In the language of Mr. Justice Blatchford, "That this court, as a court, has power to issue a writ of supersedeas under § 716 of the Revised Statutes is quite clear; for that section gives it power to issue all writs not specifically provided for by statute which may be necessary for the exercise of

its jurisdiction and agreeable to the usages and principles of law."

In re Claasen, 140 U. S., 200, 207, 208.
Ex parte Milwaukee Railroad Co., 5 Wall., 188.
Hudson *v.* Parker, 156 U. S., 277.

On the state of facts here stated, we invoke the exercise of this power without regard to any questions arising under the sections of the Revised Statutes regulating the granting of orders of supersedeas in connection with writs of error to this court. The question that is raised is certainly a novel and interesting one, and it seems to us this court must have power to exercise "its just control over the parties to the record" (10 Wall., 299) by continuing an order of supersedeas in force in the State courts at the time of the removal of the cause to this court.

A case analogous to the one at bar, upon the questions raised in this paragraph of this brief, is *Staffords* v. *King*, decided by the Circuit Court of Appeals for the Fourth Circuit, a most learned opinion being delivered by the late Judge Simonton. In the course of that opinion it is said:

"In the case of King *v.* McDonald, the Court below, permitting an appeal with the supersedeas bond, in terms suspends the decree below: 'That a transcript of the record of said cause be transmitted to said Court of Appeals, and that, pending such appeal, the said decree of June 18, 1896, so far as the same dissolves said injunction, be wholly superseded and suspended' Record in King *v.* McDonald (Case 190 in this court), 26 C. C. A., 685, 80 Fed., 1006. This being the case, the cause was heard in this court, the supersedeas being in full operation." (This was true in the case at bar upon the hearing in the Supreme Court of Mississippi on appeal from the Chancery Court of Pontotoc County.) "Our decision sustained the decree below dissolving the injunction; and ordinarily this would have put an end to the

supersedeas; *but before the mandate could go to the court below a writ of certiorari* from the Supreme Court was issued to this court directing that the record be removed." (In the case at bar this was the exact condition in the Supreme Court of Mississippi when the writ of error removing the case to this court was granted and served.) "So, the decree of the Circuit Court of Appeals has not gone into effect. 'A writ of *certiorari*, when its object is not to remove a case before trial or to supply defects in a record, but to bring up after judgment the proceedings of an inferior court or tribunal whose procedure is not according to the course of the common law, is in the nature of a writ of error.' Harris *v.* Barber, 129 U. S., 369; 9 Sup. Ct., 314. The whole case goes up on the *certiorari*. Panama R. Co. *v.* Napier Shipping Co., 166 U. S., 280; 17 Sup. Ct., 572. So the case has gone into the Supreme Court just as it came into this court, *with an order of the court below suspending the decree dissolving the injunction.*"

Staffords *v.* King (C. C. A.), 90 Fed. Rep., 136, 141.

The only difference between the case at bar and the case thus presented to the Circuit Court of Appeals for the Fourth Circuit and decided by Judge Simonton, is that here the case was removed to this court by writ of error and not by *certiorari*; and at the time of the removal the order of supersedeas in the State court and the suspensive order of the Supreme Court of Mississippi for a period of six months from the date of the decree in that court were in full force and effect.

On such a state of the record, is not the reasoning of the lamented Judge Simonton directly applicable and absolutely conclusive, and has not this court power, under § 716 of the Revised Statutes, to make such order or issue such writ as will do equity and justice between the parties and preserve the *status*

quo until this case can be disposed of upon its merits?

We invite the decision of the Court upon this question as the controlling question arising upon the matter now under consideration.

IV.

Under the rules and procedure of the Supreme Court of Mississippi there was no requirement that the transcript of record from the Chancery Court of Pontotoc County to the Supreme Court of Mississippi upon which this case was heard and disposed of in the Supreme Court of Mississippi should be a printed record. There were two appeals, as the transcript shows.

Tr., pp. 142–161.
Tr, p. 162.
Tr., p. 448.

It is from the decision upon the second appeal that the plaintiffs in error bring the case to this court by writ of error. The record of both appeals, however, constitutes the record in the Supreme Court of Mississippi which has been brought to this court.

Clerk's Certificate, Tr., pp. 497, 499.

Upon neither appeal to the Supreme Court of Mississippi was there a printed transcript of the record in the Chancery Court below. Therefore, when it became necessary to apply to a justice of this Court for a writ of error, there was no printed transcript of the record in the Supreme Court of Mississippi which could be brought up to date, certified by the Clerk of the Supreme Court of Mississippi and submitted to this court in accordance with its rules in connection with the petition for a writ of error. The record itself, in the shape in which it had been filed in the Supreme Court of Mississippi, had become separated. A portion of the record,

without which a complete transcript could not be made, had been off the files of the Supreme Court and in the possession of counsel not connected with the litigation, and its whereabouts unknown, for an indefinite period of time before the writ of error was applied for. These facts are all shown by an affidavit or affidavits which will be filed in this court upon the date fixed for the hearing of the motion under consideration, and copies of which are herewith printed.

See affidavits of Wm. Hepburn Russell and Edward Mayes, *post*, pages 22 *et seq.*

The printed transcript in this cause is an extensive one, extending to more than five hundred pages.

Under such conditions and by reason of the procedure prevailing in the Supreme Court of Mississippi it was quite impracticable, within a period of sixty days from the date of the entry of the decree of June 11, 1906, to comply with the rules of this court, get the missing portion of the transcript in the Supreme Court of Mississippi back upon the files of that court, have the transcript in its complete form printed as it now appears and secure the issue of a writ of error and an order of supersedeas. We submit it to this court whether, upon such a state of facts as this, it was not the fault of the courts of Mississippi and of the practice in those courts that the record could not be prepared and submitted to this court in connection with a petition for a writ of error within the sixty days allowed by § 1007 of the Revised Statutes of the United States.

It may be that this affords no legal excuse or justification for the failure of the plaintiffs in error to apply for and obtain the writ of error and the order of supersedeas within the sixty day limit, but it seems to us to afford a moral argument of great weight in support of the exercise by this court, on the state of facts shown by paragraphs II. and III. of this brief, of the inherent powers of this court;

and of the powers expressly conferred upon it by § 716 of the Revised Statutes of the United States.

In this connection counsel of record in this court for the plaintiff in error who submits this brief, desires, in justice to himself, to say that he was not employed in this case in the Courts below and had no connection therewith; that his employment began in connection with the preparation and submission of the petition for a writ of error to the Court, and, as it turns out, almost sixty days after the rendition of the judgment in the Supreme Court of Mississippi; that upon the presentation of the petition for the writ of error to Mr. Justice Day and the application for the order of supersedeas he inadvertently and unintentionally overlooked the fact that § 1007 of the Revised Statutes of the United States had been construed as not permitting a Justice or Judge to grant an order of supersedeas in cases where the writ of error had not been sued out within sixty days from the rendition of the judgment. His impression and belief then was that as the power to issue the writ of error still existed, there was coupled with the power, in the discretion of this court or a Justice of this court, jurisdiction to make an order of supersedeas. The questions raised by the motion now before the court had never arisen in his previous practice in this court, and he, therefore, acknowledges his ignorance of what is now contended to be the law, and disclaims any intention of in the slightest degree misleading the learned Justice to whom he made application for the writ of error and the order of supersedeas. He rejoices that in cases where he has been of counsel at a time when decrees and judgments were entered which he thought should be brought to this Court for review, he has always acted so promptly in bringing them here "in order that justice might be done" that in no case for which he has been responsible has "procrastination" as "the thief of time" robbed his clients of

any right conferred upon them by the "Supreme Law of the Land."

He does not, however, mean to criticise counsel of record for the plaintiffs in error in the courts of Mississippi, because he is fully cognizant of their learning and ability, and he believes that the condition of the record in the courts below the absence of a part of that record from the files, and the peculiar circumstances surrounding the entire case are responsible for any delay that may have occurred. He felicitates himself, notwithstanding this confession of "ignorance of the law" upon the probability that this Court, under the contentions of paragraphs II. and III. of this brief, will find itself able to lay its hand upon the parties to this cause in this Court so as to protect and conserve the rights of all and preserve the *status quo* until the final hearing of this cause upon its merits.

V.

As to the merits of this controversy in this Court we have not deemed it either essential or proper that we should enter, and we shall not now do so further than to direct the attention of the Court to the causes shown in support of the petition for a writ of error as the same are embodied in the transcript; also to the "assignment of error.

Tr., pp. 461-476, numbers in ink.
Tr., pp. 477-488, numbers in ink.

Respectfully submitted,

WM. HEPBURN RUSSELL,
Counsel for Plaintiffs in Error.

E. K. STALLO,
EDWARD MAYES,
Of Counsel.

APPENDIX.

Affidavit of Wm. Hepburn Russell.

IN THE SUPREME COURT OF THE UNITED STATES

AT THE OCTOBER TERM, 1906, A. D.

MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY *et al.*, Plaintiffs in Error, vs. STATE OF MISSISSIPPI *et al.*, Defendants in Error.	No. 590.

WM. HEPBURN RUSSELL, being first duly sworn, upon his oath deposes and says:

That he is an attorney and counselor at law, admitted and practicing as such in the City of New York, in the State of New York, and a member of the bar of the Supreme Court of the United States.

That he is the attorney and counsel of record in this cause for the Mobile, Jackson & Kansas City Railroad Company and others, plaintiffs in error.

That he and his then partner, Wm. Beverly Winslow, were first advised of the decree in this cause in the Supreme Court of Mississippi about the 15th of August, 1906, they being then consulted by the President of the Mobile, Jackson & Kansas City Railroad Company regarding the possibility of the removal of said cause by writ of error to this court; that thereupon he immediately made request for a copy of the record in the cause in the Supreme Court of Mississippi in order that he might examine the same to determine what grounds for the removal of the cause to this court existed; that he

was then advised that a copy of the transcript of record could not be obtained, first, because the same was not printed, and, second, because a part of the papers constituting the transcript of record in said cause were not upon the files of the Supreme Court of Mississippi and their whereabouts were unknown.

That thereupon he obtained from the office of the general attorneys and counsel of the Mobile, Jackson & Kansas City Railroad Company at Mobile, Alabama, copies of a part of the pleadings, papers and proofs in the cause as of record in the Chancery Court of Pontotoc County, Mississippi, hoping to be able to determine therefrom the questions submitted to him for his opinion and advice regarding the removal of this cause by writ of error to this Court. Subsequently he received a copy of the assignment of errors in the Supreme Court of Mississippi, but at no time prior to the actual printing of the transcript of record at the date shown by the affidavit of the Honorable Edward Mayes, did he receive or was he able to procure either the original or any complete copy of the transcript of record in this cause in the Supreme Court of Mississippi.

Under these circumstances he was so delayed in obtaining information regarding the record and transcript in the Supreme Court of Mississippi that he was unable, although he exercised great diligence in this regard, to obtain a sufficient part of the transcript in the Supreme Court of Mississippi to enable him to finally determine the questions submitted to him until about the first of November, 1906, and even then he was compelled to base his opinion, not upon a transcript of the record in the Supreme Court of Mississippi or a copy of said transcript, but upon copies of the pleadings, orders, records and final decree in the Chancery Court of Pontotoc County, Mississippi, and a copy of the assignment of errors upon appeal in the Supreme Court of Mississippi, together with a copy of the opinion and decree of the Supreme Court of Mississippi in this cause.

That at said time and for a long time prior thereto,

as affiant is informed and verily believes, a large part of the record in this cause in the Supreme Court of Mississippi was missing from the files of the clerk of the Supreme Court of Mississippi and its whereabouts were unknown to said clerk, so that it would have been and was, as affiant verily believes, impossible for any complete transcript of the record in this cause to have been made or printed by the said clerk of said court during the time that said portion of said record was off the files of said court and up to the date of the finding and restoration of the same to the files by the said Edward Mayes, as shown by his said affidavit.

Wherefore, affiant submits to the Court that the delay in the removal of this cause by writ of error from the Supreme Court of Mississippi to this Court and the entry of the order of supersedeas after the expiration of sixty days from the entry of the final decree in the Supreme Court of Mississippi, was not the fault of the plaintiffs in error or of their counsel, but of the condition of the record and the course of procedure and practice in the Supreme Court of Mississippi. And affiant verily believes, by reason of the facts and circumstances above recited, it was impracticable, if not impossible, for plaintiffs in error or their counsel to cause a copy of said transcript to be printed and to submit the same in accordance with the rules of this Court in connection with the petition for a writ of error and to secure the writ of error and order of supersedeas, as provided in Section 1007 of the Revised Statutes of the United States, within sixty days from the entry of the decree in the Supreme Court of Mississippi.

WM. HEPBURN RUSSELL.

STATE OF NEW YORK, }
County of New York, } ss.:

Subscribed and sworn to before me this 8th day of March, 1907.

FRANK E. CARSTARPHEN,
[SEAL.] Notary Public,
New York County.

Affidavit of Hon. Edward Mayes.

IN THE SUPREME COURT OF THE UNITED STATES

AT THE OCTOBER TERM, 1906, A. D.

MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY *et al.*,
Plaintiffs in Error,
vs.
THE STATE OF MISSISSIPPI *et als.*,
Defendants in Error.
No. 590.

Personally appeared before me, Geo. C. Myers, Clerk of the Supreme Court of Mississippi, a court of record in and of such State, and the clerk of which is authorized to take affidavits in and by Section 1010 of the Mississippi Code of 1906, Edward Mayes, who is personally known to me, and who, being by me first duly sworn, on oath saith:

That Affiant is an attorney at law, duly enrolled and authorized to practice law in and before both the Supreme Court of the State of Mississippi and the Supreme Court of the United States; that Affiant was professionally engaged in the above entitled cause while the same was pending in the Supreme Court of the State, being one of the attorneys representing the plaintiffs in error.

That the Original Bill in this cause was filed by Defendants in Error in the Chancery Court of Pontotoc County, Mississippi, to the September Term,

1904, and the injunction based thereon was dissolved on the Bill and Answer and affidavits filed, on the motion of Plaintiffs in Error, on the 14th day of April, 1905; and by the order of dissolution an interlocutory appeal was granted to the Supreme Court of the State in order to settle the principles of the cause—all in conformity with the practice in Mississippi, and with Section 34 of the Annotated Code of 1892, which was then in force.

That such appeal, so granted, was duly prosecuted by the Appellants (these Defendants in Error); and that the record and transcript thereof as the same was filed in said Supreme Court, bore, and was known under the docket number of 11,802.

The result of such appeal was, that on the 26th day of June, 1905, such interlocutory decree was reversed, such injunction reinstated, and the cause remanded to the Chancery Court.

That on such remand such further proceedings were had that on the 10th day of March, 1906, the said cause was finally heard on the pleadings and the proofs, in and by such Chancery Court, and a final decree rendered in accordance with the prayers of the Original Bill; in and by which decree an appeal was granted to the Supreme Court of the State.

That such second appeal, so granted, was duly prosecuted by the Appellants (these Plaintiffs in Error); and that the record and transcript thereof, as the same was filed in said Supreme Court, bore and was known under the docket number of 12,157.

That on such second appeal the final decree of March 10, 1906, was affirmed on the 11th day of June, 1906; such judgment of affirmance being the same judgment for the review of which this writ of error was taken.

Affiant further states that Section 75 of the Annotated Code of Mississippi of 1892 was in force when such second appeal was taken and heard, and said section is in its terms as follows:

"75. *On second appeal former transcript used.*—If a case be remanded by the supreme court to the

court below, and afterwards an appeal be taken in the same case to the supreme court, it shall not be necessary for the appellant to cause to be filed in the supreme court a transcript of so much of the record as may be already on file in said court, but the transcript previously sent up, together with a transcript of the subsequent proceedings in the case in the court below, shall constitute the record for the case in the supreme court; and in such case, if the appellant shall, in his application for appeal, signify his desire for the clerk to make out and certify only a transcript of such subsequent proceedings, the clerk shall act accordingly."

Affiant further states that because of and in accordance with such statute, the complete record in said cause was composed of and called for both the transcript filed as above under the docket number 11,802, and that filed under the docket number 12,157, neither transcript containing the entire record of the cause as finally decided.

Affiant further states that the records of the Supreme Court of Mississippi are not printed, but are in manuscript, either in ordinary writing or typewritten; and that but one copy of such records exists; and such was the case in this cause. Rule two of the said Supreme Court, so far as material herein, is, in its terms, as follows:

"Every transcript or record brought to this court shall be distinctly and plainly written or type-written on paper not less than eight, nor more than eight and one-half inches wide, and fourteen inches long, on one side of every leaf; and each page shall be numbered at the bottom, at or near the center, and there shall be a blank margin at the top of not less than one inch, and on the left of not less than one inch, the paper to weigh not less than fourteen pounds to the ream. * * * Such transcripts, whether written or type-written, shall be prefaced by a suitable index, and shall be securely bound in non-flexible paste-board covers, with marbled sides, in volumes of about an equal number of pages, not to exceed in any case two hundred and fifty pages in a volume."

The complete record in said cause was composed of three bound manuscript volumes as above, one under docket number 11,802 and two under docket number 12,157; also certain loose papers connected therewith.

Affiant states further that he received, by mail, on Sunday, November 4, 1906, a letter from Wm. H. Russell, Esq., dated November 1st, requesting affiant to take up with the clerk of the Supreme Court of Mississippi the matter of printing the record aforesaid, to be used on application for allowance of writ of error, and if possible to rush the printing thereof so as to send the same to Mr. Russell, by express, not later than a week or ten days.

On the morning of Monday, November 5th, Affiant applied to the Clerk of the Supreme Court for the transcript aforesaid, in order that the same might be printed as desired; and he was informed by the said clerk, after he had searched for the same, that none of said transcripts were in his hands or could be produced by him; that they had been taken out of his office and were charged to certain attorneys of the Court. Affiant was apprehensive that the said clerk would not, if working alone, prosecute the search for such missing records with sufficient diligence; and he himself undertook to assist him in making such search. File Number 12,152, being the two bound volumes on the second appeal, was found late in the afternoon of the 5th, the same having been passed from hand to hand by various attorneys, and out of the hands of the one to whom it had been charged; and affiant immediately arranged with the Clerk of the Supreme Court to employ two expert copyists, and have the same copied for printing. It was necessary to have the same copied for the printers because there was no warrant or authority for placing the original records of the Supreme Court of Mississippi into the hands of the workmen of a printing shop to serve for their copy. Such copyists were accordingly employed at once and put to work—without waiting to

find the record, docket number 11,802 of the first appeal.

Affiant was also apprehensive that the Clerk of the Supreme Court would fail to push on the printing of such record with the rapidity desired; and he himself undertook to do so. He, therefore, personally visited the best equipped printing job office in Jackson, and made a contract with the printers that they should lay aside other work so soon as affiant should be prepared to deliver them copy, should work their entire force nights and days and Sunday, and that affiant would revise and correct their proof sheets immediately on presentation at any time of the day or night; for which undertaking affiant agreed to pay the printers fifty per centum per page in excess of their usual rates—and they were so paid.

Affiant and the clerk continued a most diligent search for such missing record No. 11,802, but without success, the same not being in the hands of the attorney who had taken it out of the clerk's office, and he not knowing where it was. Such record was not found until Thursday, November 8th, when it was found in the hands of an attorney not connected with the cause, who had that day received it by express, as affiant was informed and believed, from some other attorney out of the city. This record was immediately placed in the hands of two additional copyists for the printers, making four in all at this work. Affiant visited such copyists frequently, urging them to diligence.

Affiant states further that the printers complied with their contract and worked at such printing nights and days and the intervening Sunday without cessation, and their messengers presented proof-sheets to affiant for revision and correction at any hour—even at one o'clock and three o'clock A. M.—which received his immediate attention.

The transcript, as printed, contained 466 pages. The printers were limited in their resources and capacity. Working diligently and as stated above,

they could not and did not complete their work until about six o'clock of the morning of November fifteenth; and at eight o'clock of the morning of that day affiant mailed two of such printed copies, duly certified by the Clerk of the Supreme Court of Mississippi, postage fully prepaid, and addressed to William H. Russell, Esq., 253 Broadway, New York City.

Subscribed and sworn to before me this the 5th day of March, 1907.

EDWARD MAYES.

Witness my signature and official seal, this the 5th day of March, 1907.

[SEAL.] GEO. C. MYERS,
Clerk of Supreme Court of Mississippi.

Affidavit of George C. Myers.

IN THE SUPREME COURT OF THE UNITED STATES,

AT THE OCTOBER TERM, 1906, A. D.

MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY *et al.*, *Plaintiffs in Error*, vs. THE STATE OF MISSISSIPPI *et als.*, *Defendants in Error.*	No. 500.

Personally appeared before me, S. S. CALHOON, one of the Judges of the Supreme Court of Mississippi, a court of record in said State, and the Judges of which are authorized to take affidavits in and by Section 1010 of the Mississippi Code of 1906, George C. Myers, who is personally known to me, and who, being by me first duly sworn, on oath saith:

That affiant is Clerk of the Supreme Court of the State of Mississippi; that he personally knows Edward Mayes; that said Mayes is an attorney at law, duly enrolled and authorized to practice law in and before the Supreme Court of the State of Mississippi, and that he was professionally engaged in the above entitled cause while same was pending in the said Supreme Court of the State, being one of the attorneys representing the plaintiffs in error.

That the original bill in this cause is shown by the record thereof to have been filed by defendants in error in the Chancery Court of Pontotoc County, Mississippi, to the September Term,

1904, and the injunction based thereon to have been dissolved on the bill and answer and affidavits filed, on the motion of plaintiffs in error, on the 14th day of April, 1905, and by the order of dissolution an interlocutory appeal appears to have been granted to the Supreme Court of the State in order to settle the principles of the cause—all in conformity with the practice in Mississippi, and with Section 34 of the Annotated Code of 1892, which was then in force.

That such appeal, so granted, was duly prosecuted by the appellants (these defendants in error); and that the record and transcript thereof, as the same was filed in said Supreme Court, bore, and was known under the docket number of 11,802.

The result of such appeal was, that on the 29th day of June, 1905, such interlocutory decree was reversed, such injunction reinstated, and the cause remanded to the Chancery Court.

That on such remand, such further proceedings are shown by the record to have been had that on the 10th day of March, 1906, that said cause was finally heard on the pleadings and the proofs, in and by such Chancery Court, and a final decree rendered in accordance with the original bill; in and by which decree an appeal was granted to the Supreme Court of the State.

That such second appeal, so granted, was duly prosecuted by the appellants (these plaintiffs in error); and that the record and transcript thereof, as the same was filed in said Supreme Court, bore and was known under the docket number of 12,157.

That on such second appeal, the final decree of March 10th, 1906, was affirmed on the 11th day of June, 1906; such judgment of affirmance being the same judgment for the review of which this writ of error was taken.

Affiant further states that Section 75 of the Annotated Code of Mississippi of 1892 was in force when such second appeal was taken and heard; and that because of, and in accordance with such statute, the complete record in said cause was composed of,

and called for, both the transcript filed as above under the docket number 11,802, and that filed under the docket number 12,157, neither transcript containing the entire record of the cause as finally decided.

Affiant further states that by the rules of practice of the Supreme Court the records in the Supreme Court of Mississippi are not printed, but are in manuscript, either in ordinary writing or typewritten; and that but one copy of such records exists; and such was the case in this cause; also that the complete record in said cause was composed of three bound manuscript volumes as above, one under docket number 11,802, and two under docket number 12,157; also certain loose papers connected therewith.

On the morning of Monday, November the 5th, 1906, Mr. Edward Mayes applied to affiant for the transcripts aforesaid, in order that the same might be copied and printed and certified for an appeal to the Supreme Court of the United States, and he was informed by affiant, after affiant had searched diligently in his office for the same, that none of said transcripts were in affiant's hands or could be produced by him; that they had been taken out of his office, and were charged to certain attorneys of the Court; whereupon, Mr. Mayes, who appeared to be anxious to get immediate possession of such records himself, undertook to assist affiant in making search for the same. File number 12,152, being the two bound volumes on the second appeal, was found late in the afternoon of the 5th, the same having been passed out of the hands of the attorney to whom it had been delivered by affiant and against whom it was charged; and affiant immediately, at the urgent request and insistence of Mr. Mayes, employed two expert copyists to copy the same for printing. It was necessary to have the same copied for the printers because there was no warrant or authority for placing the original records of the Supreme Court of Mississippi into the hands of the workmen of a printing shop to serve for their

copy. Such copyists were accordingly employed at once and put to work—without waiting to find the record, docket number 11,802, of the first appeal.

Affiant and Mr. Mayes continued a most diligent search for such missing record, number 11,802, but without success, the same not being in the hands of the attorney who had taken it out of affiant's office, and such attorney stating that he did not know where it was. Such record was not found until Thursday, November 12th, when it was delivered to the affiant from the office of an attorney not connected with the cause, who had that day received it by express, as affiant was informed and believes, from some other attorney resident out of the city. This record was immediately, by Mr. Mayes, with affiant's approval, placed in the hands of additional copyists for the printers; making four in all at this work. Affiant and Mr. Mayes, both directed such copyists, frequently urging them to diligence.

Affiant states further that in his opinion the work of copying and printing such record was prosecuted with the greatest diligence, and that it was done as rapidly as was possible in Jackson; the city is not a large one, and that the printers were limited in their resources and capacity. Working diligently and continually they could not, as affiant believes, have completed their work before they did complete the same. Affiant, at Mr. Mayes' personal request, certified such printed record at about 7 o'clock on the morning of the 15th of November, 1906.

GEO. C. MYERS,
Supreme Court Clerk.

Subscribed and sworn to before me this the 6th day of March, 1907.

Witness my signature and the official seal of said Supreme Court, this the 5th day of March, 1907.

S. S. CALHOON,
[SEAL.] Judge of the Supreme Court of Mississippi.

FILED.
APR 27 1908
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 218.

THE MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY AND THE GULF & CHICAGO RAILWAY COMPANY,

Plaintiffs in Error,

v.

THE STATE OF MISSISSIPPI, THE MISSISSIPPI RAILROAD COMMISSION ET AL.

In Error to the Supreme Court of the State of Mississippi.

Brief for Defendants in Error.

HANNIS TAYLOR,
Of Counsel.

R. V. FLETCHER,
Attorney-General of the State of Mississippi.

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 218.

THE MOBILE, JACKSON & KANSAS CITY R.R. CO., AND THE GULF & CHICAGO RAILWAY CO,
Plaintiffs in Error,

v.

THE STATE OF MISSISSIPPI AND THE MISSISSIPPI RAILROAD COMMISSION *et al*,
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR.

Statement of the Case.

This is a writ of error, sued out for the purpose of reviewing the action of the Supreme Court of Mississippi, as expressed in the case of Mobile, Jackson & Kansas City R.R. Co. *et al v.* State of Mississippi *et al*, 89 Miss. 724.

For many years prior to the year 1903, there existed in the State of Mississippi a railroad corporation known as the Gulf & Chicago Railroad Company. This was a Mississippi corporation and owned and operated a line of narrow-gauge railway extending from Middleton in the State of Tennessee to Pontotoc in the State of Mississippi. This narrow-gauge line had Pontotoc for its southern terminus, and for nearly

twenty years it maintained a depot located in the town, upon a spot which will be designated in this brief as the "old site." The Gulf & Chicago Railroad Company a short time prior to the year 1903 concluded to dispose of its railroad properties to the Mobile, Jackson & Kansas City Railroad Co., likewise a Mississippi railroad corporation, and then owning and operating a line of railroad from Mobile in the State of Alabama to Beaumont in the State of Mississippi. To the end that this property might pass effectively under the control of the M. J. & N. C. R.R., there was organized under the laws of the State of Mississippi a railroad corporation under the name of the Gulf & Chicago Railway Co., with authority to construct a railroad from Decatur in Newton County in a general northerly direction through the counties of Neshoba, Winston, Choctaw, Webster, Chickasaw, Pontotoc, Union and Tippah, crossing the line between Mississippi and Tennessee at or near Brownfield in Tippah County. This charter was granted on the 17th day of April, 1903. About the same time there was chartered in Tennessee a railroad corporation known as the Gulf & Chicago Railway Co., with authority to construct its line from near Brownfield northward through the same part of the State of Tennessee. It will thus be seen that there were two Mississippi railroad corporations, one, the Gulf & Chicago Railroad Company, actually operating a line of railway from Middleton, Tenn., southward, crossing the line of Mississippi at or near Brownfield and continuing southward through Tippah, Union and Pontotoc Counties to Pontotoc; the other the Gulf & Chicago Railway Co., authorized to construct a line from Decatur, Miss., northward through certain counties and necessarily parallel with the Gulf & Chicago Railroad Co., since it followed, for a part of the distance, the identical line actually being operated by the Gulf & Chicago Railroad Co. After the incorporation of these two Mississippi and Tennessee railroad companies, both known as the Gulf & Chicago Railway Co., the three interested companies, to-wit: The Gulf & Chicago Railroad Co., then operating the narrow-gauge line, and the two Gulf & Chicago Railway Companies filed a

petition with the Mississippi Railroad Commission asking that they be permitted to consolidate under the name of the Gulf & Chicago Railway Company. This application was filed on the 6th day of July, 1903, and in this petition (R., pp. 11 and 12) it is stated that the lines to be consolidated are in no wise parallel or competing. It is further stated; "On the contrary, the consolidation was effected for the single purpose of furthering the general plan of building and equipping and thereafter operating a single-track, standard-gauge line of railroad extending in a general northerly direction from the town of Decatur, Miss., to the city of Jackson, Tenn. The present constructed narrow-gauge railroad acquired from the Gulf & Chicago Railroad Company and running between the town of Pontotoc, Miss., and Middleton, Tenn., will be broadened and standardized, and will thereupon become a part of the line of railroad, operated by the consolidated corporation."

The Mississippi Railroad Commission granted the prayer of this petition and entered the following order:

"The application of the Gulf & Chicago Railroad Companies, organized under the laws of the State of Mississippi and Tennessee, for the permission to consolidate said corporations, coming on to be heard and it appearing to the satisfaction of the Commission that said corporations do not own or operate parallel or competing lines of railroad;

It is ordered by the Commission that permission to consolidate said corporations as prayed for in said application be and the same is hereby granted by the Commission, this 6th day of July, 1903." (R., p. 13.)

This application for the privilege of consolidating was made necessary by virtue of the provisions of Section 3587 of the Annotated Code of 1892 of the State of Mississippi which reads as follows:

"To consolidate with any other railroad company, in or out of this State, with the consent of the Railroad Commission, upon such terms as the consolidating companies may agree upon; but a consolidation shall not be made with a parallel or competing road."

It will thus be seen that the scheme contemplated that the narrow-gauge line from Middleton to Pontotoc should be broadened, standardized and made part of the line, and that the road should be extended south from Pontotoc to Decatur, at which point it would meet the Mobile, Jackson & Kansas City Railroad, then being extended northward from Beaumont. It therefore became necessary for the promoters and managers of the plan to decide on a route by which the road would be extended south from Pontotoc. For many years before all these negotiations were had the Gulf & Chicago Railroad Co. (the narrow-gauge line) had maintained a depot at its southern terminus in the town of Pontotoc. This depot was less than one-fourth of a mile from the Court House and was near to the settled and business part of the town. In February, 1903, this depot building was destroyed by fire, and was never rebuilt. Some time in the latter part of the summer of 1903, the Mobile, Jackson & Kansas City Railroad Co., which had taken over by a ninety-nine year lease the property of the Gulf & Chicago Railway Co. (the consolidated corporation), after considerable preliminary surveying decided not to build their line southward from the southern terminus of the old Gulf & Chicago Railroad (the narrow-gauge). On account of certain physical difficulties, it was determined to abandon something over a mile of the narrow-gauge line and deflect the main line of the railway, and run it westward of the town of Pontotoc, but touching the corporate limits of the town at one place. As a result of this purposed change in the line, the depot would necessarily be located much further from the business and settled part of the town than it was before. This change in the line of railway and consequent change in the location of the depot interfered seriously with the convenience of the people of Pontotoc and was objected to vigorously. When it became apparent that the railroad company did not intend to rebuild the burned depot, certain citizens of the town of Pontotoc petitioned the Railroad Commission asking that the railroad company be required to erect a new depot on the "old site," the one so long in use by the

narrow-gauge road. This petition was heard by the Commission, an investigation had, and the Commission entered an order requiring the railroad company to rebuild the depot upon the "old site." Thereupon, the Mobile, Jackson & Kansas City Railroad Co., secured an injunction from the United States Circuit Court for the Southern District of Mississippi, restraining the Commission from attempting to enforce the order. The bill alleged that it would be a violation of Section 8, Article 1 (the commerce clause) of the Constitution of the United States to require the railroad to build and maintain a depot on the "old site," since that would necessarily involve a change in the line of railway. Many allegations were contained in the bill illustrating how interstate commerce would be burdened by a change of the line, such as increased expense of construction, increased mileage, objectionable curves and grades. This cause never proceeded to a final adjudication, but has lain dormant awaiting the result of another branch of the litigation.

Pending this litigation another railroad company built its line to the westward of the town of Pontotoc, thereby carrying out its purpose to abandon about a mile of the narrow-gauge line, located its depot on this new line about three-fourths of a mile from the town, at a spot inaccessible to the business part of the town owing to distance and bad roads. In August, 1904, the State of Mississippi, by the Attorney-General, and the Mississippi Railroad Commission filed a bill in the Chancery Court of Pontotoc County to enjoin the Mobile, Jackson & Kansas City and Gulf & Chicago Railroads from operating its railroad in violation of law and seeking by mandatory injunction to compel these railroads to broaden and standardize the abandoned part of the narrow-gauge line and make it a part of the main line. The relief sought for by the bill was based upon two grounds:

1st. That the change in the line was prohibited by Section 187 of the Mississippi Constitution; and

2d. That the railroad company was under legal obligation to broaden and standardize the narrow-gauge line throughout its entire length on account of the represen-

tations made to the Commission at the time the consolidation was effected.

The allegations of the original bill upon this second proposition are as follows:

2. That defendants, the Gulf & Chicago Railway Company, was organized under the general laws of the State of Mississippi in the early part of the year 1903 with authority to construct and operate a railroad from a point at or near the town of Decatur in Newton County, Mississippi, in a general northerly direction through the County of Pontotoc and through the State of Mississippi to the Tennessee line. A copy of said charter is filed herewith as Exhibit "A" to this bill and prayed to be taken as a part thereof.

3. That at the time of the organization of the said Gulf & Chicago Railway Company as aforesaid there was in existence and then being operated from the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee, a narrow-gauge road by a railroad corporation existing under the laws of the State of Mississippi and Tennessee, known as the Gulf & Chicago Railroad Company; that said narrow-gauge road as then existing and being operated was built about the year 1887, since which date it has been in existence and operated as aforesaid by the said Gulf & Chicago Railroad Company and other corporations as hereinafter shown.

4. That the said Gulf & Chicago Railroad Company was bound by its acquisition of the said narrow-gauge line from Pontotoc, Mississippi, to Middleton, Tennessee, to continue and preserve intact throughout its entire length the said line of railroad from the town of Pontotoc north, and the consolidated corporation, the Gulf & Chicago Railway Company and its lessee, the Mobile, Jackson & Kansas City Railroad Company, were in turn bound so to continue and preserve intact the said line broadened and standardized as was stipulated in the articles of consolidation hereinafter set forth.

5. That prior to the 6th day of July, 1903, the said Gulf & Chicago Railroad Company and the said Gulf & Chicago Railway Company, with other railroad corporations were consolidated under the name of the Gulf & Chicago Railway Company, and on the said 6th day of July, 1903, a petition was presented to complainant, the Mississippi Railroad Commission, by the attorneys for the consolidated corpora-

tion, praying the approval of the said Railroad Commission of the said consolidation; that in said petition it was stipulated and by the granting of the petition by the said Railroad Commission it was agreed that the said Consolidated corporation should broaden and standardize the said narrow-gauge line running north from the town of Pontotoc, as it then existed and was being operated, and that said existing line, when broadened and standardized as agreed, should be part of the main line of said Gulf & Chicago Railway Company extending from Decatur, Mississippi, to Jackson, Tennessee. A copy of said petition and the order thereon is filed herewith, marked Exhibit "B" and prayed to be taken as a part thereof.

6. That on or about the date of the consolidation approved as aforesaid, the said Gulf & Chicago Railway Company executed and delivered to defendant, the Mobile, Jackson & Kansas City Railroad Company, a lease of all its railroad property then constructed, the narrow-gauge railroad hereinafter mentioned and operated as aforesaid from the town of Pontotoc, in the State of Mississippi, to the town of Middleton, in the State of Tennessee, and agreed by said petition presented to the said Railroad Commission by the said consolidated corporation and the order thereon to be made a part of the line extending from Decatur, Mississippi, to Jackson, Tennessee, as aforesaid, and all extensions and branches thereof which said Gulf & Chicago Railway Company might after that date construct, including its entire proposed line from the town of Decatur in the State of Mississippi, to the city of Jackson in the State of Tennessee, for the period of 99 years; that since the execution of the said lease, said defendant, the Mobile, Jackson & Kansas City Railroad Company, has been in control and operation of said line of narrow-gauge railroad between the town of Pontotoc in the State of Mississippi to the town of Middleton in the State of Tennessee.

7. Complainants further show that the said Gulf & Chicago Railway Company in violation of the terms and in disregard of the representations contained in its petition for approval of the said consolidation by this Commission to the effect that the said narrow-gauge line of railroad extending from Pontotoc, Miss., to Middleton, Tenn., should be broadened and standardized throughout its entire length and made a part of the line of said consolidated corporation authorized to be constructed by its charter, has, as complainants are informed and believe and charge, broadened and standardized the said narrow-gauge line from Middleton, Tenn., south-

ward to a point one mile and a half from the end of said line within the said town of Pontotoc, and the said defendant lessee, the said Mobile, Jackson & Kansas City Railroad Company, is now operating said line so changed to the said point to which it has been broadened and standardized, and the remaining part of said line has been abandoned, and complainants show that that part so abandoned is the most valuable and the most important part of the said road, extending through a thickly populated district in the principal business portion of the said town of Pontotoc. Complainants further show that the representation by said consolidated corporation that it would broaden and standardize the said line of railroad extending into the town of Pontotoc as the said line was on the date of said consolidation being operated was a material consideration in passing upon the said petition, and the said consolidation would not have been approved but for the said representation.

8. Complainants further show that said line has been abandoned and its operation discontinued and the defendant has refused to broaden and standardize it without any authority from complainant, the Mississippi Railroad Commission, and that its consent has never been asked nor given thereto, and the said act of abandonment was wholly unauthorized, in violation of law, in utter disregard of the rights of the community intended by said Commission to be protected by the said order approving the consolidation aforesaid.

9. Complainants further show that the said narrow-gauge line of railway was constructed by the Gulf & Ship Island Railroad Company about the year 1887; that when the said line was extended into the said town of Pontotoc a right of way was obtained for the location of said line by purchases, by the exercise of the right of eminent domain as complainants are informed and believe, and by the donations from the people of that community; that said right of way for said line in the said town of Pontotoc was selected and determined upon with a view to extending the railroad on south through the said town of Pontotoc and the said road was built and established and the town has been building for the last twenty years with reference to the line of railroad then so located.

Complainants show that the interests of the public are involved in the said change of route through the community of the town of Pontotoc; that the convenience and comfort and property of more than one thousand people are involved; that a change of said route would disturb established condi-

tions and practically effect the breaking up of a prosperous community for the benefit of said defendants and for a few property owners in another part of the town of Pontotoc recently added thereto through which it is proposed to run the new line of railroad as hereinafter shown.

10. * * *

11. Complainants show that the conduct of the said defendants in undertaking to build their said line just outside the limits of the county seat is in violation of said Section 187 of the Constitution, in wilful disregard of the law and of the order of the complainant, the Mississippi Railroad Commission, and shows a reckless indifference to the rights of the people long established.

12. Complainants now show that the said defendants are actually engaged in the said violation of the laws of the State of Mississippi and of the order of the Commission approving the consolidation aforesaid, and of the rights of the public. That the damage done and about to be done will be irreparable if not prevented; that they have no adequate remedy at law; that the rights of the public and of the several parties hereto can be fully, adequately, promptly and finally adjudicated only by a court of equity.

The prayer of the bill is as follows:

"Wherefore, complainants pray that an injunction issue at once against the said defendants temporarily restraining them and each of them from constructing and operating the said proposed line of railroad passing within three miles of the said county seat without passing through same, and upon final hearing they be perpetually enjoined from building and operating a road along said route and commanding them to broaden and standardize the said line of railroad extending into the said county seat of Pontotoc County, as it has been established for years and as the said consolidated corporation agreed to do from the point north of the said county seat from which said narrow-gauge line has been abandoned, and that the said defendants be required to operate the said line into the said county seat as a part of the line built and to be built from Decatur, Mississippi, to Jackson, Tennessee, and that they be commanded to extend the said line on through the said county seat as required by said Section 187 of the Constitution of the State of Mississippi and as required by law and by the order of the complainant, the Mississippi Railroad Commission.

"And complainants pray that if they are mistaken in the

relief prayed they be granted such other further or general relief as the nature of their case requires and as in equity they are entitled to.

"As in duty bound they will ever pray. An answer under oath is expressly waived."

Upon this bill an injunction was obtained, and at the September Term, 1904, of the Chancery Court, the cause was on petition of the defendant railroad companies removed to the United States Circuit Court for the Northern District of Mississippi. The only reason alleged as grounds of removal were that the bill sought to interfere with interstate commerce, and that the subject matter of the litigation was involved in the case pending in the Federal Court. Upon motion, the Circuit Court of the United States remanded the cause to the Chancery Court of Pontotoc County. After the cause was remanded answer was filed, and again the only federal question relied on was that the bill as sought to be maintained would be an interference with interstate commerce.

After the cause was remanded to the Chancery Court, the defendant railroad companies made a motion to dissolve the injunction, which motion was sustained by the Chancellor, and the injunction was dissolved. An appeal was taken by the State from the decree dissolving the injunction, and the Chancellor's decree was reversed by the Supreme Court.

See State of Mississippi *et al v.* M. J. & K. C. R. R. Co. *et al*, 86 Miss. 172.

By that opinion there was eliminated from the cause all consideration of Section 187 of the Constitution, but the theory of the bill as to the railroad company's obligation under the consolidated order was fully sustained. The injunction was reinstated and the cause was remanded to the Chancery Court of Pontotoc County. After the reversal of the cause, proof was taken and upon the final hearing a decree was entered by the Chancery Court making the injunction perpetual and requiring the railroad companies to broaden and standardize the narrow-gauge line through-

out its entire length and make it a part of the main line of the Gulf & Chicago Railway. From that decree an appeal was prosecuted to the Supreme Court of Mississippi. Pending that appeal the Legislature of Mississippi passed a bill, known as the "Stegall Bill," being Chapter 143 of the Session Acts of 1906. The measure is as follows:

Section 1. Be it enacted by the Legislature of the State of Mississippi: That the Gulf & Chicago Railway Company, as consolidated, be and it is hereby, authorized and empowered to operate its line of railroad through the town and county of Pontotoc as the same is now located and constructed, and that abandonment of that part of the narrow-guage line heretofore operated into the town of Pontotoc from the point at which the line is now constructed diverged from the old line to the southern terminus of the old narrow-gauge line be, and the same is hereby, ratified and confirmed and approved.

Section 2. That the said Gulf & Chicago Railway Company shall, within ten days after the approval of this act, commence the work of constructing a railroad track over the entire portion of the narrow-gauge railroad right of way heretofore abandoned by it, and shall cause the same to be connected with its main line at the point where the said main line diverges from the old narrow-gauge right of way, and shall cause the same to be completed and ready for operation within six months from the passage of this Act.

Section 3. That when said track is completed over that portion of the old narrow-gauge right of way heretofore abandoned it shall be the duty (at the option of the consignee) of said railway company to deliver at the southern terminus of said track, at a suitable depot to be constructed and maintained by said railroad company at said southern terminus, all freights handled by it, into the town of Pontotoc in car load lots, and said railway company shall receive for shipment over its line, at said depot, car load lots of cotton offered for shipment at said depot.

Section 4. That whenever the municipal authorities of the town of Pontotoc shall select for improvement a highway from any designated point in the business portion of the town of Pontotoc to the depot of said railway company as the same is now located, constructed and used, and shall have ascertained the cost of improving said highway, it shall be the duty of said railway company to pay one-half of the cost of said improvement to such official of the munici-

pality of the town of Pontotoc as may be authorized to receive the same; said sum, together with an equal amount appropriated in the work of improving said highway.

Section 5. Nothing in this Act contained shall be construed to affect or impair any valid contract now existing.

Section 6. That this Act shall take effect from and after its passage.

Becomes a law under Section 72 of the State Constitution.

The Supreme Court declared that Act unconstitutional and affirmed the decree of the Chancery Court.

89 Mississippi, 724.

From that judgment this writ of error is sued out.

BRIEF OF THE ARGUMENT.

No Federal Questions Involved.

It is the contention of defendants in error that this case presents no federal question for the consideration of this Court. It is apparent that plaintiffs in error cannot contend that more than three federal questions are involved. They must arise, if at all, under—

1st. The Fourteenth Amendment;

2d. The clause of the federal constitution prohibiting a State from passing a law impairing the obligation of a contract.

3d. The clause relating to interstate commerce.

Each will be considered in its order.

Fourteenth Amendment.

In this record there is no mention of any right or question arising under the Fourteenth Amendment, *until after the final judgment of the Supreme Court of Mississippi.* Then it is raised for the first time in the petition for a writ of error and in the assignment of errors filed in this Court. Not once in the bill filed by plaintiff in error in the Circuit Court of the United States, nor in the petition for removal to the United States Circuit Court, nor in the original or amended answer, nor in the assignment of errors filed on

either appeal to the Supreme Court of Mississippi is there the slightest direct or inferential reference to any claim under the Fourteenth Amendment.

It is, of course, perfectly well settled by the decisions rendered here that this Court will not notice a federal question not relied upon in the State Court, and mentioned for the first time after final judgment in the State Court. Thus it is said in a very recent decision of this Court that the raising of a Federal question for the first time in the petition for a writ of error and in the accompanying assignment of errors is not sufficient to enable the Supreme Court of the United States to consider that question, even though another Federal question has been properly raised and brought up by the same writ of error.

State of Montana Ex Rel *v.* Rice, 204 U. S. 291 (51 L. Ed. 490).

See also,

Corkan Oil & Development Co. Amandet, 199 U. S. 182 (50 L. Ed. 143).

Dewey *v.* Des Moines, 173 U. S. 193 (43 L. Ed. 665).

Osborne *v.* Clark, 204 U. S., 565 (51 L. Ed. 619).

But it is argued in the "causes shown," annexed to the petition for a writ of error that this Federal question, to-wit: Whether the Fourteenth Amendment is involved, arose for the first time by the judgment of the Supreme Court of Mississippi; that it could not have been raised earlier than it was, because this question was not involved until after the Mississippi Supreme Court had rendered its decision. This argument might be sound, as it is certainly; ingenious, if it had any basis in fact. But the argument is refuted by an examination of the decree of the Chancery Court of Pontotoc County, the judgment of the Supreme Court of Mississippi, and the opinion of the Court upon which the judgment was based. Now it is admitted that there was no assignment of error in the appeal to the Supreme Court of Mississippi, based on any claim of right growing out of the Fourteenth Amendment; and it is said that such

assignment was not made because it did not and does not appear that the decree of the Chancery Court of Pontotoc County, in and of itself, necessarily would have the effect of forcing the Gulf & Chicago Railroad Co. to abandon its line of railway, its rights of way, its station and its property, as the same then existed into and through the town of Pontotoc, and to cease to operate trains over said line of railway through said town, or to maintain said depot and station upon said line in said town, and to require the railroad company to acquire new rights of way along a new and different route into and through said town and to a point of junction at the terminal station or depot of the old narrow-gauge line.

Let us see what the decree of the Chancery Court does provide as to these matters. We quote from the decree (R., p. 445).

"It is therefore ordered, adjudged and decreed that the injunction heretofore granted be and the same is hereby made perpetual and that said defendant companies are hereby perpetually enjoined from building and operating a railroad along any line that does not include and comprise the original line of the said Gulf & Chicago Railroad Company, as originally constructed and maintained, and that said defendant companies are hereby directed and commanded to broaden and standardize the entire line of the original narrow-gauge railroad, including that part which has been heretofore abandoned as aforesaid, throughout its entire length, and that said defendant companies are hereby commanded and directed to construct its lines of railway in such way as to include as part of its main line all the line of narrow-gauge line, and it is further ordered that the said defendant companies begin work of broadening and standardizing that part of the line heretofore abandoned within thirty days of the rendition of this decree, and directs that the broadening and standardizing of this abandoned line must be completed within sixty days of this date, and that the said defendant railroad companies shall begin the operation of all their trains and the delivery and receipt of all freights and passengers over and upon the said abandoned part as aforesaid within sixty days of the date of this decree, and it is further ordered and decreed that the construction of the line so as to connect the new line with

the original line from the southern terminus of said original line shall be completed within six months of this date, and it is further decreed that the modification of the injunction heretofore made in this cause be and the same is hereby revoked and set aside, and it is further decreed that in case an appeal is taken in this case as to the preventive part of the injunction herein made perpetual no supersedeas shall be allowed upon any terms, but as to mandatory part of the injunction seeking affirmative relief, supersedeas will be granted upon making application for appeal and filing a bond in the sum of $5,000 conditioned as provided by law with good and sufficient sureties to be approved by the clerk, provided same is applied for and bond given within five days of the rendition of this decree and provided said appeal be prosecuted to the April Term of the Supreme Court, 1906."

This is the decree which was affirmed by the Supreme Court of Mississippi, and the judgment of the Supreme Court affirming the decree is in these words (R., p. 450):

"This case having been submitted on a former day of this term on the record herein from the Chancery Court of Pontotoc County, and the Court having sufficiently examined and considered the same and being of the opinion that there is no error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this case at the March Term thereof, A. D. 1906, on the 10th day of March, 1906, be and the same is hereby affirmed, by this Court, and that the appellee do have and recover of the appellant and J. D. Fontaine, J. W. Taylor, J. T. Baker and C. W. Young, sureties, in the appeal bond, the costs of this cause in this Court and in the Court below, to be taxed, etc."

In the light of the decree and the order affirming it, how can it be said that the Supreme Court for the first time confiscated the property of plaintiffs in error by something in its judgment which did not appear in the decree appealed from? It should likewise be borne in mind that the decree of the Chancery Court was responsive to the pleadings and in conformity with the prayer of the bill. In other words plaintiffs in error were fully apprised of what the original bill of complaint sought to accomplish, as is shown by the

language of the bill and the proof taken, and yet no defence predicated on the Fourteenth Amendment was ever interposed even by intimation.

But it may be argued that the Supreme Court of Mississippi modified the decree of the Chancery Court, and that the violation of the Fourteenth Amendment consists in the modification, and therefore arises for the first time upon the judgment of the Supreme Court.

In answer to this, it is perhaps sufficient to say that while a modification is mentioned in the opinion of the Court, yet that part of the opinion was ignored and disregarded when the Court entered its judgment. The judgment is quoted above *and consists of an unmodified affirmance of the decree.*

It will hardly be argued that the opinion of the Court is to be taken as controlling rather than the judgment. The action of the Court is evidenced alone by its judgment actually entered and not by what the opinion may recite as to what the judgment ought to be.

But if mistaken in this, it is perfectly apparent the modification complained of was in the interest and for the benefit of plaintiffs in error and not to their detriment. The modification, so called, is contained in the closing paragraph of the opinion of the Court. The Mississippi Court, instead of affirming outright, as it might have done, *out of regard for plaintiffs in error,* directed that plaintiffs might have six months of grace within which to comply with the Court's order. The Court will understand that the spur track was a part of the narrow-gauge line and would be a part of the main line when the decree of the Court below should be complied with. Instead of forcing plaintiffs to cease to operate the new or westward line at once, the Supreme Court preferred to allow a reasonable time in which to obey the decree, in order that no possible injustice might be done.

But if again mistaken, this modification is harmless because the six months period therein stated has long since expired, and the judgment of the Mississippi Supreme Court has long since been superseded by the writ of error

and the supersedeas granted thereon. Consequently, all questions arising under this modification are now moot questions, and will not now be considered.

Jones *v.* Montague, 194 U. S. (48 L. Ed. 913).
Mills *v.* Green, 159 U. S. 651 (40 L. Ed. 293).

We submit that it is perfectly clear that this Court cannot consider any claim of right under the Fourteenth Amendment to the federal constitution.

LAW IMPAIRING THE OBLIGATION OF A CONTRACT.

But it is argued that the Court has violated that clause of the Federal constitution which prohibits a State from passing a law impairing the obligation of a contract. That contention is based upon certain rights founded on the charter of the Ripley Railroad Co., approved May 13, 1871; and it is raised for the first time in the assignment of errors filed in the Supreme Court of Mississippi on the second or final appeal of the case. The contention is thus disposed of by the Supreme Court of Mississippi:

"Nor do we think the contention of learned counsel for appellant that Section 8 of the original charter of the Ripley Railroad Company, in Acts 1871, ch. 80, p. 275, to the effect that that Company might exercise the power of eminent domain just as in its original location 'for the purpose of making such railroad or repairing or changing it afterwards,' at all effects the duty of these appellants, under their solemn agreement above set forth, according to the conditions on which the right to consolidate was granted, to broaden and standardize the said narrow-gauge railroad in its entire length, and make it a part of their main line of railroad. They did not stand in the Court below on this provision of their charter. They did not, in the inception of this matter, when they filed their petition for consolidation invoke this Section 8 as authority for 'changing' the line of the narrow gauge, deflected as shown by the evidence in this case it has been deflected. That would have presented a very different proposition; but they sought the change actually and precisely and only upon the conditions upon which the right to consolidate was granted them. It would be inequitable in the highest degree on their part to obtain the

consent of the State, through its Railroad Commission, to consolidate upon the express agreement to broaden and standardize the narrow-gauge railroad in its entire length, and make it a part of their main line of railroad, and rest upon this alone, and here, for the first time, upon the second appeal to this Court, to say, notwithstanding all this, that they had power under said section 8 to change the line of the narrow-gauge railroad as they might desire, simply under said Section 8. If Section 8 gave them any such power, which we do not now decide, they have assuredly waived and are estopped to invoke it by their conduct in this matter."

It being therefore clear that this contention was rejected by the Mississippi Court, if for no other reason than because it was raised too late, this case is, in that aspect, stronger than the case of Cox *v.* Texas, 202 U. S. 446 (50 L. Ed. 1099). In that case it was held that although a Federal question is raised in the assignment of errors to the State Court of last resort, and in the assignment of errors to this Court, yet, if the State decision was put upon another point, declining to deal with the question probably because it was raised too late, the point will not be considered by the Supreme Court of the United States. The case at bar is stronger than the case just cited, because we know positively that the Supreme Court of Mississippi refused to consider the point upon the precise ground that it was raised too late. See also,

Chi. I. & L. Ry. Co. *v.* McGuire, 196, 127 (49 L. Ed. 412).
Jacobi *v.* Alabama, 187 U. S. 131 (47 L. Ed. 106).
Eastern Bldg. & Loan Assn. *v.* Welling 181 U. S. (45 L. Ed. 739).

It is, therefore, submitted with confidence that since the Supreme Court of Mississippi has declined to consider this assignment of error, solely upon the ground that it was not relied on in the Chancery Court, this Court will respect the rules of practice in vogue in the State of Mississippi, and will hold with Mississippi Court that the point was raised too late.

But, if mistaken in this, it is well settled that the pro-

hibition of the Federal Constitution extends only to such judgments as give effect to statutes. Thus it is said:

"Regarding the impairment of any alleged contract, it must be borne in mind that the constitutional provision refers to state legislation, or to an enactment of a legislative character, though by a municipal corporation, made subsequent to the contract, and which impairs its obligation. New Orleans Waterworks Co. *v.* Louisiana Sugar Ref. Co., 125 U. S. 18, 30, 31, L. Ed. 607, 612, 8 Sup. Ct. Rep. 741; St. Paul Gaslight Co. *v.* St. Paul, 181 U. S. 124, 148, 45 L. Ed. 788, 21 Sup. Ct. Rep. 575.

"This Court does not obtain jurisdiction to review a judgment of a State Court because that judgment impairs or fails to give effect to a contract. The State Court must give effect to some subsequent statute or State Constitution which impairs the contract, and the judgment of that Court must rest on the statute either expressly or by necessary implication. Mississippi & M. R. Co. *v.* Rock, 4 Wall. 177, 180, 19 L. Ed. 381, 382; Mississippi & M. R. Co. *v.* McClure, 10 Wall. 511, 19 L. Ed. 997; Knox *v.* Exchange Bank, 12 Wall. 379, 20 L. Ed. 414.

"These cases are referred to and applied in Lehigh Water Co. *v.* Easton, 121 U. S. 338, 392, 30 L. Ed. 1059, 1060, and Sup. Ct. Rep. 916."

New Orleans Waterworks Co. *v.* Louisiana, 185 U. S. 334 (46 L. Ed. 937).

It is apparent therefore that unless some state statute is involved, there is nothing for this Court to review so far as this part of the case is concerned.

Recognizing this familiar principle, plaintiffs in error have asserted that the Act of 1890 of the State of Mississippi and the Mississippi Code of 1892, relating to the duties and powers of the Railroad Commission, are in abrogation of the contract rights of plaintiffs as fixed by the legislative charter of the Ripley Railroad Company. But it will readily be seen from even a casual reading of the opinion of the Supreme Court that the only statute of Mississippi which could possibly be involved is that one prohibiting consolidating of railroad companies without the consent of the Railroad Commission. Now the right alleged to have been conferred upon the Ripley Railroad Company was the right to alter

its lines. If the Gulf & Chicago Railroad Company, the successor in interest and title to the Ripley Railroad Company, sees proper to make a representation to the Mississippi Railroad Commission, by virtue of which the company estops itself from declining to adopt the narrow-gauge as part of the main line, an opinion declaring and enforcing such estoppel could not be held to be a giving effect to a statute which impairs the obligation of a contract. As said in another case:

"Where the Federal question upon which the jurisdiction of this Court is based grows out of an alleged impairment of the obligation of a contract, it is now definitely settled that the contract can only be impaired within the meaning of this clause in the Constitution, and so as to give this Court jurisdiction on writ of error to a State Court, by some subsequent statute of the state which has been upheld or effect given it by the State Court. Lehigh Water Co. *v.* Easton, 121 U. S. 389 (30: 1059); New Orleans Waterworks Co. *v.* Louisiana Sugar Ref. Co. 125 U. S. 18 (31: 607); Central Land Co. *v.* Laidley, 159 U. S. 103–109 (40 L. Ed. 91–93). As stated in the case reported in 125 U. S. *supra*, it is not necessary that the law of a state, in order to come within this constitutional prohibition, should be either in the form of a statute enacted by the Legislature in the ordinary course of legislation, or in the form of a Constitution established by the people of the state as their fundamental law. A by-law or ordinance as a municipal corporation may be such an exercise of legislative power delegated by the Legislature to the corporation as a political subdivision of the state, having all the force of law within the limits of the municipality, that it may properly be considered as a law within the meaning of this article of the Constitution of the United States.

If the judgment of the State Court gives no effect to the subsequent law of the State, and the State Court decides the case upon grounds independent of that law, a case is not made for review by this Court upon any ground of the impairment of the contract."

Bacon *v.* State of Texas, 153 U. S. 207 (41 L. Ed. 132).

See also

Winona & St. Peter R.R. Co. *v.* Plainview, 143 U. S. (36 L. Ed. 191).

But if again mistaken, it will scarcely be held that the charter of the Ripley Railroad Company conferred upon the corporation or its successor a right which it could not estop itself to assert. It should be borne in mind that the final decision of the Mississippi Court rested exclusively upon the ground of estoppel; *it held that the acts and conduct of plaintiffs in error was such that it would be inequitable for them to refuse to do what they had agreed to do* The very idea of estoppel presupposes a right which could be asserted but for the estoppel. If the right did not exist, of course plaintiffs could not estop themselves from asserting it. It may be conceded, therefore, for the purpose of the argument, that this charter gave to plaintiffs a right which no subsequent legislation could impair. Yet it by no means follows that plaintiffs themselves, by their own error, could not be barred from the privilege of ascertaining that right. The right to change a line cannot carry with it the right to consolidate, and if, in order to obtain the right to consolidate, the corporation chooses to waive the right to alter its line, no contract obligation is interfered with by enforcing the agreement which plaintiffs have voluntarily made.

And so, upon three several and distinct considerations there is no merit in this alleged federal question.

INTERFERENCE WITH INTERSTATE COMMERCE. ESTOPPEL.

The remaining ground upon which this writ of error is predicated, indeed the only one which this Court can consider at all, is that involved in the question whether the decree of the Chancery Court of Pontotoc County, as affirmed by the Mississippi Supreme Court, is an interference with interstate commerce within the prohibition of the United States Constitution. That question was relied on by plaintiffs in error throughout the litigation; it was mentioned in the petition for removal and in the answer, and was argued at every stage of the proceeding. Indeed that is the only federal question which this Court can consider.

The Supreme Court of Mississippi, however, placed its decision squarely and solely upon a non-federal ground. Its opinion has to do with a domestic corporation dealing with the State Railroad Commission of its own State. As already indicated the opinion is placed exclusively upon the theory that plaintiffs in error are estopped to refuse to broaden and standardize the narrow-gauge line and make it a part of the main line. That estoppel arises from the representations made in the petition for consolidation and the order for granting the privilege of consolidation (R., pp. 11, 12 and 13).

The rule governing the practice of the Supreme Court of the United State has been thus stated:

"If the judgment rested on two grounds, one involving a federal question and the other not, or if it does not appear on which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. Dibble *v.* Bellingham Bay Land Co., 163 U. S. 63, 41 L. ed. 72, 16 Sup. Ct. Rep. 939; Klinger *v.* Missouri, 13 Wall 257, 20 L. ed. 635; Johnson *v.* Risk, 137 U. S. 300, 34 L. ed. 683, 11 Sup. Ct. Rep. 111."

Especially will this Court decline to interfere when the sole question is as to whether a party has been given or refused the benefit of the law of estoppel, since that involves no federal question.

Meyerhoused *v.* Minnesota, 176 U. S. 550. (44 L. Ed. 583.)

"A decision by a State Court that a corporation is estopped to set up the invalidity of a statute, even if it is unconstitutional by the action of its board of directors, cannot be reviewed on writ of error from the Supreme Court of the United States to the State Court, since the non-federal ground is broad enough to support the judgment."

Hale *v.* Lewis, 181 U. S. 473 (45 L. ed. 959.)

See also, on the question of estoppel: Eustis *v.* Bolles, 150 U. S. 361.

So here, conceding that the judgment interferes with interstate commerce or impairs the obligation of a contract, or violates the Fourteenth Amendment, this Court can grant no relief since plaintiffs in error have estopped themselves to plead any of these defenses to escape from the consequences of their solemn agreement.

Electric Co. *v.* Daw, 166 U. S. 489 (41 L. ed. 1088).
Clay *v.* Smith, 3 Pet. 411.
Beaupre *v.* Nayes, 138 U. S. 397.
Eustis *v.* Bolles, 150 U. S. 361.
Luther *v.* Borden, 7 How. 40.
Beecher *v.* Cheshire R. Co., 125 U. S. 555.
Pittsburg C. C. & St. L. R. Co. *v.* Backus, 154 U. S. 421.
McElvaine *v.* Brush, 142 U. S. 155.
Miller *v.* Swann, 150 U. S. 132.

But aside from this the whole controversy has to do with the location of a line of railway. It does not deal with the operation of trains, nor even except incidentally with the location of a depot.

The sole end sought to be accomplished by the bill is to compel plaintiffs in error to locate and construct their line of railway in the manner in which they were bound to do under their agreement. The commerce clause of the Federal Constitution cannot be applied to the question of the location of a line of railway. Thus it is said:

"The rules prescribed for the construction of railroads and for their management and operation, designed to protect persons and property otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, though they control, in some degree, the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and of rightful exercise of the police power of the state to regulate the relative rights and duties of all persons and corporations within its limits."

Chicago, Milwaukee and St. Paul Ry. Co. *v.* Solan, 169 U. S. (42 L. ed. 688).

In Wabash, St. L. & P. R. Co. *v.* Illinois, 118 U. S. 557, Justice Bradley in his dissenting opinion uses this language:

"It is evident from what has been said, that the dealing of a State with a railroad corporation of its own creation, in authorizing the construction and maintenance of its road and the charge of the fares and freights thereon, is, in its purpose, a matter entirely aside from that kind of regulation of commerce which is obnoxious to the provisions of the Constitution. There is not a particle of doubt that it was the right of the State to prescribe the route of the plaintiff's (in error) road—it might be in a direction north and south, or east and west; it might be by one town, or by a different town; it was its right to prescribe how the road should be built, what means of locomotion should be used on it, how fast the trains might run, and at what stations they should stop. It was its right to prescribe its charges, and to declare that they should be uniform, or if not uniform, how otherwise; this certainly was the right of the State at the inception of the charter, and every one of these things would most materially affect commerce not internal but external; and yet not one of them would be repugnant to the power of Congress to regulate commerce within the meaning of the Constitution."

While this statement occurs in a dissenting opinion, it is a correct statement of the law, and is not at variance with the holdings of the majority of the Court, nor with the controlling facts in that particular case.

In Missouri, Minnesota and Pacific R.R. Co. *v.* Jackson, 179 U. S. 287 (45 L. ed. 194), the contention was made that it was an interference with interstate commerce to require intersecting railroads to make physical connection between tracks as directed by the Minnesota Statute. But this Court held that such interference, if any resulted, would be but incidental, and disallowed the contention in this language:

"Plaintiff in error urges that transporting cattle from Minnesota to Iowa constitutes interstate commerce, and that neither the State of Minnesota nor its Railroad Commission has the right to in any manner interfere with or regulate such commerce. The judgment in this case, however, neither regulates nor interferes with that com-

merce, nor does that part of the statute upon which the judgment is founded. Whether any other portion of the statute does regulate such commerce is beside the question, and it is not necessary here to decide. To provide at the place of intersection of these two railroads, at Hanley Falls, ample facilities by track connections for transferring any and all cars used in the regular business of the respective lines of road from the lines or tracks of one of said companies to those of the other, and to provide at such place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines and for the receiving, forwarding, and delivering of property and cars to and from their respective lines, as provided for by this judgment, would plainly afford facilities to interstate commerce, if there were any, and would in no wise regulate such commerce within the meaning of the Constitution. That is all that has been done by the judgment under review. A State may furnish such facilities or direct them to be furnished by persons or corporations within its limits without violating the Federal Constitution."

It is to be noted that the Court in that case did consider the reasonableness or unreasonableness of the statute, but that part of the opinion was directed to the contention that the Fourteenth Amendment was involved, a question not in the present case because raised too late.

But again assuming for argument's sake that the construction and location of the line of a domestic railroad can be said to involve the commerce clause of the Federal Constitution, let us see what the record discloses as to the facts, so far as they bear on the contention that the construction of the line as required by the judgment of the Supreme Court of Mississippi interferes with commerce between the States.

In the amended answer filed in this cause (R., p. 168) it is said that the relief sought by the bill will, if granted, interfere with interstate commerce because the enforcement of the decree will cause the line of railway to be lengthened, will necessitate delay on account of objectionable curves and grades, and will cause such an increase in the cost of construction as will embarrass the operations of the road. But when the testimony is examined with care it appears,

so far as the line and the objectionable grades and curves are concerned, that these would all be eliminated by a proper construction of the line. By far the most accurate testimony given in the case was that of H. S. Jones, Chief Engineer of the Mobile, Jackson & Kansas City & Gulf and Chicago Railroad Companies. That gentleman surveyed the line, made the estimate and was familiar with the cost of the line, the availability of the several proposed routes and the relative expense of construction. In his cross-examination (R., p. 354) he testified as follows:

"Q. Now, the route—you say the railroad could have been constructed by the old depot, provided no work had been done over there on the new route, at an additional cost of about thirty-five thousand dollars?

"A. Yes, sir.

"Q. Now, if you had spent that thirty-five thousand dollars, Mr. Jones, you could have put that route in as good condition for traffic, except as to increase milage, as any other?

"A. Yes, sir; we could have spent thirty-five thousand dollars.

"Q. That expense would not have called for any radical change at this place?

"A. It contemplated radical changes in the grades, but that would have been taken care of in the thirty-five thousand dollars additional expenditure.

"Q. That would have eliminated these grades?

"A. Yes, sir.

"Q. Then if you had spent the thirty-five thousand dollars, there would have been no increase burden on traffic, except the increased mileage?

"A. The burden on traffic would have been in the increased cost of operation.

"Q. Due entirely to the increased mileage?

"A. Yes, sir.

"Q. So that, by expending that thirty-five thousand dollars you could not have distributed your scheme of grades which prevailed throughout the line?

"A. No, sir.

"Q. Now, the—about this mileage business, Mr. Jones—the increased cost to the railroad company would have been just three-fourths of the cost of building a mile of road.

"A. Yes, sir.

"Q. Regardless of any special difficulties in the way here?
"A. Yes, sir."

Again on page 366 he testifies:

"Q. Now, this thirty-five thousand dollars that you speak of, the cost of construction by the old depot out there, included the cost of putting the narrow-gauge line in good repair—good condition?
"A. Yes, sir."

It thus appears that, by the expenditure of an additional $35,000, the line which the decree of the Chancery Court directs plaintiff in error to construct would be in every way as suitable for traffic as the line selected by the railroad companies; that all objectionable grades and curves would thus be eliminated; that no burden would thereafter be imposed on interstate commerce except such as follows from an increased mileage of three-fourths of a mile. The only factor which this testimony leaves in the case is the increased cost of the line. This hardship, if it may be so called, might be taken into consideration upon the plea that the Fourteenth Amendment was being violated, but it cannot be considered as affecting any question relating to interstate commerce.

It will no doubt be insisted that it is highly inequitable and unjust that plaintiffs in error should be required to pay this additional sum, but it must be remembered that the testimony in this record shows that the abandonment of this established line of railway means a financial loss to the people of Pontotoc much greater than the added cost to the railroad companies. It is shown by the testimony of citizens and business men of Pontotoc that property in the town would be damaged by the change to the extent of at least one-fourth of its value. This would mean a direct loss in deterioration of at least one hundred and fifty thousand dollars. It should require no argument to demonstrate that a fine of one-fourth the value of the entire property of a small town should not be imposed in order to save a five million dollar railroad corporation an expense

which would be only about seven-tenths of one per cent. of the value of its property.

It may be argued that the Chancery Court of Pontotoc County should not have entertained this cause because the same matters were being litigated in the Federal Court. But a careful reading of the two bills, one filed in the Federal Court and the other in the State Court, shows that they related to different things entirely. The federal suit was to enjoin the Railroad Commission from enforcing its order as to a depot. The suit in the Chancery Court related exclusively to the location of a line of railway. It was said by the Supreme Court of Mississippi on the first appeal:

"Where its new depot shall be located—in what portion of the town—is a matter not involved in this litigation, and is a question for future discussion between the appellees and the Railroad Commission. But it must be established and maintained either at the old depot site, or, if not bound by a lawful and enforceable contract to maintain it at that place, then at a convenient and accessible point, with due regard to the interest of the railroad and the public convenience. Should the appellees select a new site which is inconvenient or inaccessible, then the Commission is empowered by Code 1892, Section 4309, to designate the location and enforce obedience to its order."

It was said on the second and final appeal:

"We have nothing to say in this opinion about the depot or its location. On that point the Court said before: 'Where its new depot shall be located, in what portion of the town, is not a matter involved in this litigation, and is a question for future discussion between the appellees and the Railroad Commission.' This declaration expressly took out of this case any consideration of the location of the depot. We have nothing to do with that matter. We deal alone with the obligation, voluntarily entered into by the appellants with the Railroad Commission, that, if they should be permitted to consolidate, they would broaden and standardize the then existing narrow-gauge railroad and make it a part of their main line; and that, and that only, is the core of this contention, and that, and that precisely, is what we deal with, and decide in this case, to-wit, that these appellants are bound by their solemn obligation,

deliberately entered into, as stated above, to broaden and standardize the narrow-gauge railroad and to make it a part of the main line. The depot is a matter with which we have no concern."

Thus, in both decisions, the subject matter of the bill filed in the Federal Court is not touched; and it cannot be said that the State Courts have not given full faith and credit to the orders and proceedings of the Federal Court.

Something is said in the assignment of errors to this Court in regard to the "Stegall Bill," Chapter 143 of the Laws of 1906. But this Act has been declared unconstitutional by the Supreme Court of Mississippi. It is fundamental that this Court will not interfere with the decision of a State Court upon the constitutionality of its own statutes.

It is idle to contend that any rights have accrued to plaintiffs in error by virtue of this act. It was passed after final judgment in the Chancery Court and was promptly thereafter declared null and void.

The cause should be affirmed.

Respectfully submitted,

R. V. FLETCHER,
Attorney-General,
State of Mississippi.

HANNIS TAYLOR,
Of Counsel.

MOBILE, JACKSON AND KANSAS CITY RAILROAD COMPANY *v.* STATE OF MISSISSIPPI.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

No. 218. Argued April 29, 1908.—Decided May 18, 1908.

The creation of a board of railroad commissioners and the extent of its powers; what the route of railroad companies created by the State may be; and whether parallel and competing lines may consolidate, are all matters which a State may regulate by its statutes and the state courts are the absolute interpreters of such statutes.

Where the contention of plaintiff in error that a charter right has been impaired by subsequent state action was disposed of by the state court on the non-Federal ground that if any such right ever existed plaintiff in error was estopped by its own conduct from asserting it, this court cannot review the judgment on the alleged Federal ground of impairment of the contract.

A decree of a state court requiring a railroad company which does an interstate business to construct its lines within the State in accordance with the provisions of its charter and the directions of the state railroad commission is not an interference with interstate commerce because compliance therewith entails expense or requires the exercise of eminent domain.

How a state statute should be construed, whether a contract is created thereby, and whether the statute is constitutional under the state constitution, are not, in the absence of any claim that the contract, if any, has been impaired by subsequent state action, Federal questions.

89 Mississippi, 724, affirmed.

THIS is a bill in equity, brought by the State of Mississippi and the Railroad Commission of that State, to require the railroad companies to construct their railroad through the county seat of Pontotoc County, State of Mississippi, and to restrain them from abandoning a portion of the narrow gauge railroad formerly operated by the Gulf and Chicago Railroad Company, which ran to the town of Pontotoc.

The following is a summary of the bill: The Railroad Commission exists under the laws of the State of Mississippi, and is, under the laws, charged with the duty of supervising railroads and other common carriers, and also with the duty of

enforcing the observance of the laws by such companies and other carriers. The Gulf and Chicago Railway Company was organized in 1903, under the laws of Mississippi, with authority to construct a railroad from the town of Decatur, Miss., in a general northerly direction, through the county of Pontotoc, and through the State of Mississippi to the Tennessee line. At the time of the organization of such railway company there was in existence from the town of Pontotoc, Miss., to the town of Middleton, Tenn., a narrow gauge road, which was operated by the Gulf and Chicago Railroad Company, a corporation under the laws of Mississippi. The railroad company was bound to continue and preserve intact throughout its entire length the narrow gauge road, and the Gulf and Chicago Railway Company and its lessee, the Mobile, Jackson and Kansas City Railroad Company, hereafter called the Mobile Company, were in turn bound to so continue and preserve intact the said line, "broadened and standardized as was stipulated in the articles of consolidation hereinafter set forth." Prior to the sixth of July, 1903, the Gulf and Chicago Rail*way* Company and the Gulf and Chicago Rail*road* Company, with other railroad companies, were consolidated under the name of the Gulf and Chicago Railway Company, and on that day a petition was presented to the Railroad Commission, praying the approval of the consolidation. It was stipulated in the petition, and by the granting of it by the Commission it was agreed, that the consolidated corporation should broaden and standardize the narrow gauge road running from the town of Pontotoc, "as it then existed and was being operated," and that when broadened and standardized it should be a part of the main line of the Gulf and Chicago Railway Company extending from Decatur, Miss., to Jackson, Tenn. The petition and order were made part of the bill. On or about the time of the consolidation, approved as aforesaid, the Gulf and Chicago Railway Company leased to the Mobile Company all of its railroad property then constructed and operated, and that thereafter to be constructed, including the narrow gauge road from Pon-

totoc to Middleton, and including its entire proposed line from Decatur to Jackson, and since the execution of the lease the Mobile Company has been in control and operation of the narrow gauge road. The Gulf and Chicago Railway Company, in violation of the terms and in disregard of the representations contained in its petition to the Commission, has broadened and standardized the narrow gauge road to a point one mile and a half from the end of the line in Pontotoc County and is operating the same. The remaining part, which is the most important part of the road, extending through a thickly populated district in the principal portion of Pontotoc, has been abandoned. It was a material consideration, in passing on the petition for consolidation, and the consolidation would not have been approved but for the representation that the company would standardize and broaden the line extending into the town.

The narrow gauge road was constructed in 1887 by the Gulf and Ship Island Railroad Company. When it was extended into Pontotoc a right of way was obtained by purchase, by the exercise of the right of eminent domain and by donations by the community, and when the right of way was selected it was with the view of extending the road south through the town. The town was built and established, and the town has been building for the last twenty years with reference to the line of railroad then so located. The interests of the public are involved in the change of road; the convenience and comfort of more than 1,000 people are involved; the change of road would disturb established conditions, and practically break up a prosperous community for the benefit of the defendants and a few property owners in another part of the town, recently added thereto, and through which it is proposed to run the new line of railroad. The original town of Pontotoc is the county seat of Pontotoc County, as fixed by the legislature of the State, and § 187 of the constitution of the State provides that no railroad thereafter constructed in the State "shall pass within three miles of any county seat without passing through the same and estab-

lishing and maintaining a depot therein, unless prevented by natural obstacles; provided such town or its citizens shall grant the right of way through its limits and sufficient grounds for ordinary depot purposes." The Gulf and Chicago Railway Company is constructing its new line within three miles of Pontotoc without passing through the same. There are no natural obstacles in the way. The citizens stand ready to grant the right of way through the limits of the town and sufficient grounds for depot purposes. In fact, the company owns a right of way through a large part of the town and sufficient ground for depot purposes. The conduct of the company is in violation of the constitution, and in willful disregard of the law and of the order of the Commission and the rights of the public.

The inadequacy of the remedy at law is alleged.

The injunction prayed was against the construction of the line of road proposed and to command the defendant to broaden and standardize the line of road extending through the town of Pontotoc, and to compel its operation into the said county seat as a part of the line built and to be built from Decatur, Mississippi, to Jackson, Tennessee, and to extend the said line on through to the said county seat, as required by said § 187 of the constitution of the State of Mississippi, and as required by law and by the order of the complainant, the Mississippi Railroad Commission. General relief was also prayed.

The answer of the defendant companies, in addition to traversing the allegations of fact of the bill, alleges the following: Prior to the filing of the petition, seeking the approval of the Railroad Commission of the State to the consolidation of the railroads, the officers of the companies had caused surveys to be made through the town of Pontotoc, with the view to best serve the interest of the people of that community in the location of the line of railroad and the establishing of its depot in the town, and it became apparent that it would be impossible to utilize that portion of the narrow gauge line extending north about one mile from the depot. This was submitted to the

people of the town prior to the application for consolidation, in a meeting called for that purpose, and, by an overwhelming majority, the position taken by the officers of the companies was acquiesced in and approved. Before the filing of the bill the companies had located and constructed their line as proposed at such public meeting, had purchased a depot site and erected a handsome and commodious depot on the site, into which it is now operating a standard gauge road. And all of this done before the filing of the bill.

The Railroad Commission made an order in the month of June, 1904, requiring the companies to build a depot on that part of the line of the narrow gauge road since abandoned, and upon the old site of the depot used by that road, and outside of the original town of Pontotoc, the enforcement of which was enjoined by the United States Circuit Court for the Southern District of Mississippi, which suit is now pending. The Commission is still insisting upon the order and resisting the efforts of the companies to enjoin its enforcement. Such order, it is alleged, is inconsistent with the bill in this case.

The line of road now being constructed by the Gulf and Chicago Railway Company from Decatur to Jackson is being constructed upon a different scheme of grades from that upon which the narrow gauge line was constructed, and necessarily adopted to enable the company to transact its business with the least expense and with the view of enabling it to successfully meet the competition of other lines. If the grades of the narrow gauge road had been adopted it would have been practically impossible for the railway company to operate successfully, because of the heavy grades, and would have caused an additional cost of construction of $90,000; would have lengthened the road, increased the fixed charges of maintaining the property, increased the cost of operation, and the cost to the company of transacting all interstate commerce business from Mobile, Ala., to Tennessee.

By amendments subsequently made to the answer it was alleged that when the consolidation of the companies was had

it was the purpose (which was well known to the Railroad Commission) of making the consolidated company a through trunk line of railroad for interstate commerce and the transmission of the mails, and that one of the vital objects to be attained was to shorten the line in every way possible. It is further alleged that a refusal to permit the execution of such purpose "will impose unnecessary and unreasonable burdens upon the interstate commerce and will violate in letter and spirit § 8, Article I, of the Constitution of the United States. And, it is alleged, that the southern end of the old narrow gauge road line runs into deep hollows and ends in a cluster of big hills, which, to cut through, would cause great expense and entail long delay; that the line would thereby be lengthened, and it would be hampered and prevented from doing an interstate business in successful competition with other lines."

The case, on petition of the railroads, was removed to the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, and was subsequently remanded to the state court on motion of the defendants in error.

A temporary injunction was granted, enjoining and commanding the Mobile Company and the Gulf and Chicago Railway Company to "absolutely refrain from constructing and operating a certain line of railroad from Decatur, Mississippi, to Middleton, Tennessee, or any other line of railroad from any point whatsoever to any other point passing within three miles of the county seat of Pontotoc County, Mississippi, as the said county seat was originally laid out, marked and established, without passing through the said county seat . . ."

Upon motion of the companies and after proofs submitted a decree was entered dissolving the injunction, the decree reciting that all of the relief prayed for by the bill could be obtained by a mandatory injunction if the allegations of the bill should be sustained upon the final hearing; and further reciting that "the public interests of the county north and south of the town of Pontotoc, along the line of said railroad, as well as the

interests of the railroad, will suffer by reason of the continuance of the temporary injunction." All other questions were reserved until the final hearing.

The Supreme Court of the State reversed the decree, reinstated the injunction and remanded the case to the Chancery Court. 86 Mississippi, 172.

After a trial upon the merits the Chancery Court entered a decree, making the injunction perpetual. The decree was affirmed by the Supreme Court. 89 Mississippi, 724. Other facts will appear in the opinion.

Mr. William Hepburn Russell for plaintiffs in error:

The Federal questions presented by the record in this case confer jurisdiction upon this court to review the decision of the Supreme Court of Mississippi.

The record clearly shows claims of rights under the Constitution of the United States expressly made by plaintiffs in error in the court below, any one of which, if sustained, would have required the Supreme Court of Mississippi to reverse the decree of the Chancery Court of Pontotoc County. *C., B. & Q. Ry. Co.* v. *Drainage Com.*, 200 U. S. 561; *Grand Rapids Ry. Co.* v. *Osborn*, 193 U. S. 17; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116, 142; *Yazoo &c. R. Co.* v. *Adams*, 180 U. S. 1, 15.

The decree of the Supreme Court of Mississippi, although avowedly placed upon a non-Federal ground, actually deprives the plaintiffs in error of their property without due process of law, and denies to them the equal protection of the laws by conferring upon the state Railroad Commission powers and authority not granted to it by the statutes of the State of Mississippi.

It sustains a claim of power and authority exercised by the state Railroad Commission compelling the plaintiffs in error to abandon their line of railway through the town of Pontotoc, as located, graded and in operation, and their depot as built and in use, and to acquire rights of way and locate and construct a new line through said town. The Railroad Commission of the

State of Mississippi "is a mere administrative agency of the State." *Mississippi R. R. Comn.* v. *Illinois Central*, 203 U. S. 335, 341. It has no powers beyond those given it by statute and is strictly limited in its exercise of power by the laws creating it. *Commissioners* v. *Oregon Ry. Co.*, 17 Oregon, 65; *Nashville R. R. Co.* v. *State*, 137 Alabama, 439.

The statutes of Mississippi forbid the consolidation of parallel and competing lines of railroad and forbid the Railroad Commission to consent to the consolidation of such lines and confer no power upon the Commission to enter into contracts whereby such a consolidation of competing lines can be effected. The orders of railroad commissioners are not contracts. *New Haven &c. R. Co.* v. *Hammersly*, 104 U. S. 1.

The decision of the Supreme Court of Mississippi deprives, without due process of law, the Gulf and Chicago Railway Company, plaintiff in error, of its vested contract rights under chapter 143 of the laws of Mississippi of 1906, which was a valid exercise of legislative power constituting a contract between the State and the plaintiff in error. *Blake* v. *McClung*, 172 U. S. 239; *Ex parte Virginia*, 100 U. S. 339; *Scott* v. *McNeill*, 154 U. S. 34, 45; *Douglas* v. *County of Pike*, 101 U. S. 677, 686, 687; *Edwards* v. *Kerzey*, 96 U. S. 595; *Gelpke* v. *Dubuque*, 1 Wall. 175, 206, 207; *Rowan* v. *Runnells*, 5 How. 134, 139; *Thompson* v. *Lee County*, 3 Wall. 327; *Olcott* v. *Supervisors*, 16 Wall. 678; *Guthrie National Bank* v. *Guthrie*, 173 U. S. 528, 533.

The Gulf and Chicago Railway Company having located its line through the town of Pontotoc and established its station therein in strict conformity to § 187 of the constitution of Mississippi and in accordance with its line between its terminal points as established by its charter, the state Railroad Commission, and the courts of Mississippi are without power to compel it to abandon that line and that station and establish a different line over a different route and a different station at a different point.

This proposition having been thus judicially established in *Mississippi* v. *Mobile, Jackson & Kansas City R. Co.*, 86 Mis-

sissippi, 172, the power of the state Railroad Commission over the line and station of the Gulf and Chicago Rail*way* Company in the town of Pontotoc was exhausted and the Supreme Court of Mississippi, upon the final appeal, by its decision and decree affirming the decree of the Chancery Court of Pontotoc County, deprives the plaintiffs in error of their property without due process of law, because although the proceeding was conducted under the guise of a judicial controversy, neither the State of Mississippi nor its Railroad Commission had authority to invoke the judicial power in confiscation of the property rights of the plaintiffs in error.

Statutes providing for enforcement by proceedings in chancery of the orders of the Commission, refer solely to the duties and powers enumerated in the statutory provisions under which a railroad commission is created and exists. *Nashville &c. Ry. Co.* v. *State*, 137 Alabama, 439.

The Supreme Court of Mississippi in its final opinion in this case rests its decree entirely upon an alleged contract in the order of consolidation. As such a contract was beyond the power of the Railroad Commission to enter into, the decree of the Supreme Court predicated upon it is a taking of property without due process of law and a denial of the equal protection of the laws to the plaintiffs in error.

The laws of Mississippi creating the state Railroad Commission and conferring powers upon it, if such powers go to the extent established by the opinion of the Supreme Court of Mississippi in this case, are laws impairing the obligation of contracts in this, that § 8 of the "Act to Incorporate the Ripley Railroad Company" conferred upon that company and upon the Gulf and Chicago Railroad Company as its legal successor the right to change the location of its line through the town of Pontotoc and under the decision of the Supreme Court of Mississippi holding that the Railroad Commission under the Railroad Commission laws had power to abrogate this right, the laws creating the Railroad Commission as so construed are laws impairing the obligations of contracts.

Mr. R. V. Fletcher, Attorney General of the State of Mississippi, and *Mr. Hannis Taylor*, for defendants in error:

There is no Federal question presented by the record in this cause for the consideration of the court. The record shows that no right or question arising under the Fourteenth Amendment was claimed or raised until after the final judgment of the Supreme Court of Mississippi. It was raised for the first time in the petition for writ of error. Under the decisions of this court, this was too late. *Montana* v. *Rice*, 204 U. S. 291; *Corkran Oil &c. Co.* v. *Arnaudet*, 199 U. S. 182; *Dewey* v. *Des Moines*, 173 U. S. 193; *Osborne* v. *Clark*, 204 U. S. 565.

The contention that the court has violated the clause of the Federal Constitution which prohibits a State from passing any law impairing the obligation of a contract, was raised for the first time in the assignment of errors filed in the Supreme Court of Mississippi on the second or final appeal of the case, and it is clear that this contention was rejected by the Mississippi court, if for no other reason than because is was raised too late. *Cox* v. *Texas*, 202 U. S. 446. See also, *Chi., I. & L. Ry. Co.* v. *McGuire*, 196 U. S. 127; *Jacobi* v. *Alabama*, 187 U. S. 131; *Eastern Bldg. & Loan Assn.* v. *Welling*, 181 U. S. 47.

Since the Supreme Court of Mississippi has declined to consider this assignment of error, solely upon the ground that it was not relied on in the Chancery Court, this court will respect the rules of practice in vogue in Mississippi, and will hold that the point was raised too late.

In any case, it is well settled that the prohibition of the Federal Constitution extends only to such judgments as give effect to statutes. *New Orleans Water Works Co.* v. *Louisiana Sugar Ref. Co.*, 125 U. S. 18, 30, 31; *St. Paul Gaslight Co.* v. *St. Paul*, 181 U. S. 124, 148; *M. & M. R. Co.* v. *Rock*, 4 Wall. 177; *M. & M. R. Co.* v. *McClure*, 10 Wall. 511; *Knox* v. *Exchange Bank*, 12 Wall. 379; *Lehigh Water Co.* v. *Easton*, 121 U. S. 338, 392; *New Orleans Water Works Co.* v. *Louisiana*, 185 U. S. 334.

The action of the Railroad Commission and the decisions of the Mississippi courts herein, do not constitute an interference

with interstate commerce. The commerce clause of the Federal Constitution cannot be applied to the location of a line of railway. *C., M. & St. Paul Ry. Co.* v. *Solan*, 169 U. S. 133; *Wabash, St. L. & P. R. Co.* v. *Illinois*, 118 U. S. 557; *Mo., Minn. & Pac. R. R. Co.* v. *Jackson*, 179 U. S. 287.

MR. JUSTICE MCKENNA, after making the foregoing statement, delivered the opinion of the court.

The defendant railroad companies in their motion to dissolve the temporary injunction urged as grounds thereof, among others, that the injunction imposed a direct and unnecessary burden upon and was an interference with interstate commerce and an interference with the carrying of United States mail. To those grounds the court did not apparently respond, and the Supreme Court did not refer to them in either of its opinions.

Counter contentions are urged. Plaintiffs in error contend that the Federal questions set up by them were evaded. Defendants in error contend that such questions were not involved and are not now presented for consideration.

The opinion of the Supreme Court on the first appeal was very elaborate, and we can only give a brief summary of the propositions decided. The court gives a summary of the facts of the bill, the averments of the petition to the Commission and the terms of its order, and says that "waiving minor considerations not sufficiently developed by the proof," and "passing at once to the very heart of the matter," the case divided into two main branches:

"1. What is the true interpretation to be given § 187 of our constitution and has it any application to the facts of this litigation? 2. What are the legal rights of the citizens of the town of Pontotoc and the duties of the appellees as to the narrow gauge road which was in use and active operation before and at the consolidation hereinbefore referred to and at the date of the leasing of its property by one appellee to the other?"

Under the first branch the court decided that appellants (defendants in error here) could, under the facts of the record, be "afforded no relief by the language or intendment of § 187 of the constitution." This branch of the case, therefore, needs no further consideration.

As elements in the discussion and decision of the second branch of the case, the court said that there had been no consolidation between the Gulf and Chicago Railroad Company and the Gulf and Chicago Railway Company, and if the latter company had constructed its road over the route in the direction specified in its application for incorporation, it would inevitably have been a parallel and a competing line with the narrow gauge line then in existence, and the consolidation of the roads would not have been permitted. "More than this," it was said, "an express grant of power by the legislature for the two companies to consolidate . . . would have been void, as being in contravention of the general statutory inhibition against consolidation or purchase of competing lines of railroads, which cannot, without violating § 87 of the constitution of the State, be suspended 'for the benefit of any individual or private corporation or association.'" And to sustain this proposition *Y. & M. V. Ry. Co.* v. *So. Ry. Co.*, 83 Mississippi, 746, was cited. It was deduced from § 3587 of the code of the State of 1892, that the statement in the petition that the roads were "in no way parallel or competing lines," were statements of jurisdictional facts, "upon the existence of which depended the power of the corporations to consolidate." And following *Lusby* v. *Railroad*, 73 Mississippi, 364, the court held that the Gulf and Chicago Railroad Company was without power to abandon or relocate any portion of its line, "except on the score of 'imperious necessity.'" An exception, it was said, not suggested by the facts of this record. These restraints and duties, it was further said, came to the consolidated corporation.

On the return of the case to the Chancery Court, and after a hearing on the merits, that court entered a decree making the

injunction perpetual. The decree recited that the court found "as a fact" that a valid contract existed between the Gulf and Chicago Railroad Company and the citizens of Pontotoc, which provided that the line of the railway of the company should be established and maintained where the same was established and maintained before the consolidation of that company with the other companies, and that the town had not given its assent to the abandonment of that line. The court further found "that no natural obstacles or imperious necessity prevented the said defendant companies from broadening and standardizing" the narrow gauge road "and making it a part of the main line of the proposed railroad, and no such obstacles or necessity existed to prevent the said companies from extending their said lines from the southern terminus of the said original line . . . and that the allegations of the bill have been sustained by the proof, and that the complainants are entitled to the relief prayed for." The Supreme Court affirmed the decree of the Chancery Court, repeating, with some modifications, the principles which it expressed on the first appeal of the case. It said that in a former opinion the court expressly held that "the consolidation was conditioned upon the broadening and standardizing the then existing narrow gauge railroad, and making it a part of the main line of railroad operated by the consolidated corporation." And it was alone, it was further said, upon the compliance of those conditions that the Railroad Commission consented to the consolidation, and without which the Commission would have had no power to authorize the consolidation, and without which the consolidation would not have been effected. So insistent was the condition, the court held, in view of the fact, that the roads would otherwise be parallel and competing roads, that the legislature could not relieve from it without violating § 87 of the constitution of the State.

The court expressed the law of the State to be that parallel and competing roads could not consolidate, and that other roads could only consolidate with the consent of the Railroad Commission. And it was also said that the roads recognizing

the law stated in their petition to the Commission "that their railroads were 'in no way parallel or competing lines,' and expressly pledged themselves to broaden and standardize the then existing narrow gauge railroad, and to make it a part of the main line and operated by the consolidated corporation. . . . And it is upon this ground, and this ground alone, that we now hold that the decree of the Chancellor should be affirmed." The court took pains to repeat this limitation. And, excluding other questions, the court said that it had nothing to do with the location of the depot, and that it dealt alone with the "obligation entered into" by the companies with the Commission, "that only," to quote the words of the court, "is the core of this contention and that, and *that precisely*, is what we deal with and decide in this case, to wit, that these appellants [plaintiffs in error here] are bound by their solemn obligations, deliberately entered into, as stated above, to broaden and standardize the narrow guage railroad and make it a part of the main line."

We have made these full quotations from the opinions and decrees of the state courts to clearly show what facts were found and what principles of law laid down that we might estimate the Federal questions which it is contended are involved in the case. We have seen that the Federal grounds invoked in the motion to dissolve the temporary injunction were that the injunction imposed a direct and unnecessary burden upon and was an interference with interstate commerce, and was an interference with the carrying of the United States mails. In the amended answer the same grounds were repeated with more circumstantiality and § 8, Article I, of the Constitution of the United States, was invoked.

The same grounds were practically repeated in the assignment of errors on the appeal to the Supreme Court of the State, and in addition the provision of § 10, Article I, which prohibits any State from inpairing the obligation of a contract was invoked on the ground that the decree of the Chancery Court impaired "the obligation of the contract right

to change the location of the narrow gauge road embodied in § 8 of the charter of the Ripley Railroad and in the articles of organization of the Gulf and Chicago Railroad Company."

In the assignments of error in this court the plaintiffs in error have for the first time invoked the Fourteenth Amendment to the Constitution of the United States. To sustain this assignment it is contended that the Supreme Court of the State, by directing the consolidated company "to operate the spur track as soon as completed, connecting the main line on the north with the town of Pontotoc," deprives plaintiffs in error of their property without due process of law. And a like result is produced, it is also contended, by the decision of the court holding the "Stegall Bill," so called, to be invalid. The latter ground will be referred to hereafter. Of the other, it is said, it arose for the first time upon the decree and opinion of the Supreme Court, as it is further said that the decree of the Chancery Court did not deny the rights of the companies under the Fourteenth Amendment. It is difficult to appreciate the contention. The decree of the Chancery Court recited, among other things, that no natural obstacles existed to prevent the companies from extending their line "from the southern terminus" of the original line, and enjoined the companies from building and operating any line that "did not include or comprise the original line of the Gulf and Chicago Railroad Company, as originally constructed and maintained," required them to broaden and standardize the entire line of the original narrow gauge railroad, and to construct their line of railway in such a way as to include as a part of the main line "all of the line of the narrow gauge line." And it was commanded that the work commence within thirty days and be finished within sixty days. The Supreme Court, in its opinion, said: "In view of the various interests here involved, we direct the appellant to operate *the spur* track as soon as completed, connecting the main line on the north with the town of Pontotoc." The court therefore accepted and approved what was already done and modified the decree of the Chancery Court in the interest of

the companies. And it besides extended the time for compliance with the decree from sixty days to six months. But aside from this, all of the contentions of the companies (except that based on the "Stegall Bill," which will be presently considered) depend upon the power of the Commission, the petition of the companies and the order of the Commission upon the petition. And these, we think, were all local questions the decisions of which we have no power to review. There is nothing in the statutes or Constitution of the United States which prevents a State from creating a board of railroad commissioners, and what powers the board shall have will depend upon the law creating them, of which the courts of the State are the absolute interpreters. Whether corporations shall remain separate or be permitted to consolidate is a matter of state regulation and provision. It is competent also for a State to prescribe the route of the railroad it creates and to provide that parallel and competing lines shall remain so. And this power was exercised by the State of Mississippi. It is not exactly clear whether this is disputed by the companies. It is, however, contended that the Commission is a mere administrative agency, and that its only real power or duty in the matter of consenting to consolidations is to determine that such consolidations are not of parallel or competing roads, and that the Commission has nothing whatever to do with the terms of the consolidation. And it is further contended that there was no agreement or contract of any kind between the companies and the Commission, that the order of the Commission was "merely an official finding that the two roads came within the necessary statutory requirements," and that the attempt of the Supreme Court to base its decision and decree upon the ground that the petition and order constituted a contract binding upon the plaintiffs in error was a "mere pretext intended to avoid the determination of the Federal questions arising in the case, and to place its decision on a non-Federal ground." We cannot assent to this view. The power of the Commission and the effect of its order were necessarily presented by the case.

They were grounds of suit. They became, therefore, the immediate and primary questions to be decided. The power of the Commission, and the effect of its order, depended upon the statutes of the State, and of them, as we have said, the Supreme Court is the absolute interpreter. The matter is exceedingly simple and is best explained by the reference to the opinion of the Supreme Court of the State. The court declared that the roads, but for their consolidation, would have been parallel and competing roads, and in order to make their consolidation—in order to give the Commission power to consent to their consolidation—the companies represented that the roads were not parallel and competing. Of course, they would not be if they were made parts of one line. And it was represented that they would be made parts of one line—to be made so by the broadening of the narrow gauge road, not by its abandonment in whole or in part. Upon this representation, upon this condition, the consent of the Commission was invoked and secured.

Much more discussion is unnecessary. It is enough to add to that which we have said, that the decree of the Supreme Court does not work an interference with or cast a direct burden upon interstate commerce. The case of the *Illinois Central R.R. Co.* v. *Illinois*, 163 U. S. 142; *Cleveland &c. Ry. Co.* v. *Illinois*, 177 U. S. 514, and *Mississippi Railroad Commission* v. *Illinois Central R. R. Co.*, 203 U. S. 335, cited by the companies to sustain their contentions, are not apposite. In those cases there was an interference with interstate trains for local purposes, though local needs had been adequately supplied. In the case at bar there is the insistence of the operation of a particular road, which the companies themselves selected or represented that they had selected. That compliance will entail expense or require the exercise of eminent domain will not make it a burden upon interstate commerce. *Wisconsin &c. R. R. Co.* v. *Jacobson*, 179 U. S. 287. Besides, the comparative expense of roads, we must assume, was considered when the petition to the Commission was made.

It is further contended by the companies that they had the right, under § 8 of the charter of the Ripley Railroad Company, to change the location of its line through the town of Pontotoc, and that the charter constitutes a contract which is impaired, it is further urged, by the laws creating the Railroad Commission, as interpreted by the Supreme Court of the State. Section 8 of the charter provides that for the purpose of making the railroad provided for in § 2, "*or repairing or changing it afterwards*," the railroad shall have rights of entering upon adjoining land, etc., upon making compensation to the owners. What power this section confers may be open to dispute. It may be said that the right of "this repairing or changing" the railroad does not give the power to abandon it. However, the Supreme Court did not pass upon the meaning of § 8. The court said if that section gave the companies the power to change the line of the narrow gauge road as they desired, they waived it, and are estopped to revoke it by their obtaining the consent of the State through its Railroad Commission to broaden and standardize that line through its entire length. This was a question for the Supreme Court to decide. It was fairly presented to the court. We cannot question the motives of its judgment; indeed we cannot say that we dissent from it. At any rate, it is not reviewable. *Eustis* v. *Bolles*, 150 U. S. 361; *Weyerhauser* v. *Minnesota*, 176 U. S. 550; *Hale* v. *Lewis*, 181 U. S. 473; *Schæfer* v. *Werling*, 188 U. S. 516.

The final contention of plaintiff in error is based on the act of the legislature of the State, called the "Stegall Bill." This act was passed after the decree of the Chancery Court, and it is contended that it is an express legislative enactment which approved the location by the Gulf and Chicago Railway Company, as consolidated, of its railway through the town of Pontotoc, and authorized a continuance of the same on condition that it should broaden and standardize the track into the old town and to the site of the old station. These conditions, it is asserted, were performed, and a contract was hence entered into between the State and the railroad company, and that the

decision of the Supreme Court, "denying the obligation of this contract, is either, (*a*) a law impairing the obligation of a contract; or (*b*) a denial to the plaintiff in error of the equal protection of the laws; or (*c*) the taking of their property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States."

The Supreme Court decided that the bill was unconstitutional, saying: "So far as the Stegall Bill is concerned, it is perfectly obvious, as already held in the former opinion, that this special act, which was in substance for the benefit of this particular corporation, was, under the general statute laws, which we have referred to with respect to consolidation, palpably and manifestly violative of § 87 of the constitution, and plainly null and void." This conclusion is attacked, and our construction is invoked of the constitutional provision against that made by the Supreme Court of the State.

We are unable to yield to the appeal. It is only when the judgment of a state court gives effect to a law subsequent to that (or it may be a constitution), which it is alleged constitutes a contract, that we may review the judgment and decide the question of contract. And this would involve the construction of the law. But the record presents no such case. The "Stegall Bill," it is true, is claimed to be a contract, but its validity is not asserted against a subsequent law. It is asserted against prior laws and the Constitution. The decision of the court, therefore, was of that kind that a court is often called to make under the laws and constitution of its State. To assert error in the decision or even to be able to demonstrate it does not invest us with the power of review. Nor do the other supposed consequences of the decision of the Supreme Court give us jurisdiction to review it. That it denies the companies the equal protection of the law, we may say, is without any foundation. No discrimination against them is pointed out, and to say that the decision takes their property without due process of law is only another way of saying that they had a contract, the obligation of which is impaired. Of course,

they assert rights under the "Stegall Bill," but in that they present a very common case within the exclusive jurisdiction of the state court.

Judgment affirmed.